APR 25 1958
JOHN T. FEY, Clerk

Joint Appendix to Briefs

Volume 1 (pages 1 to 188)

United States Court of Appeals for the District of Columbia

Appeal No. 12,853

Consolidated Trimming Corporation
appellant

vs.

Florence F. Loudon
appellee

Appeal from the Judgment of the District Court, dismissing Complaint for declaratory judgment of patent-invalidity and non-infringement

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4

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Plaintiff's Exhibit 42: a piece of defendant's tape, supplied by defendant's counsel	physical
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Plaintiff's Exhibit 49-D: specimen of plaintiff's "Nip-Tite" pleater (supplied by defendant's counsel);—forming part of Defendant's Exhibit 1 and of Plaintiff's 49 ..... physical

Plaintiff's Exhibit 49-E: specimen of plaintiff's "Nip-Tite" pleater (supplied by defendant's counsel);—forming part of Defendant's Exhibit 1 and of Plaintiff's Exhibit 49 ..... physical

Plaintiff's Exhibit 50: empty box in which 2⅔ yards of plaintiff's "Bestpleat" tape and 10 of plaintiff's "Bestpleat" pleaters are packaged and sold ..... physical

Plaintiff's Exhibit 51: empty box in which 2⅔ yards of plaintiff's "Bestpleat" tape and 10 of plaintiff's "Nip-Tite" pleaters are packaged and sold ..... physical

Plaintiff's Exhibit 52: specimen of defendant's 2-finger (nickel-plated) pleater formed of wire, similar to that shown in Figure 2 of the patent-in-suit and like that shown in Figures 1 of Plaintiff's Exhibits 44 & 45 (at App. 187 & 188) ..... physical

Plaintiff's Exhibit 53: defendant's 4-finger (copperplated) pleater like that shown in Figure 2 of the patent-in-suit ..... physical

Plaintiff's Exhibit 54: defendant's one-finger (copper-plated) hanger hook like that shown in Figures 5 & 6 of the patent-in-suit and in Figures 2 of Plaintiff's Exhibits 44 & 45 ... physical

Defendant's Exhibit 1: drapery with plaintiff's "Bestpleat" tape with pockets open at the top and five of plaintiff's "Nip-Tite" pleaters (this exhibit also constitutes Plaintiff's Exhibits 49 and 49-A to 49-E) ..... physical

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Defendant's Exhibit 2: specimen of plaintiff's "Nip-Tite" pleater with hook near the top and with the paint completely removed from the tip of one finger# thereof and scraped, in two lines, off the sides of the tip of another finger# thereof ..... physical

Defendant's Exhibit 3: sketch made by the witness Platt, at request of defendant's counsel 277

Defendant's Exhibit 5: specimen of defendant's "No-So" 4-finger (nickel-plated) pleater like that of Figure 2 of the patent-in-suit ..... physical

Defendant's Exhibit 6: a piece of defendant's "No-So" tape sewn to the top of the piece of the drapery material ..... physical

Defendant's Exhibit 7-A: the Kirsch Company's 4-finger pleater formed of wire with hook near the center ..... physical

Defendant's Exhibit 7-B: a piece of the Kirsch Company's "Easypleat" tape ..... physical

Defendant's Exhibit 8-A: the Eastern Company's 4-finger pleater stamped out of sheet-metal and painted ivory color ..... physical

Defendant's Exhibit 8-B: a piece of the Eastern Company's tape ..... physical

Defendant's Exhibit 9-A: specimen of the Judd Company's 4-finger pleater, of formed wire, with hook near the top, and with the tips of fingers coated with red paint or lacquer .... physical

Defendant's Exhibit 9-B: a piece of the Judd Company's "Pleatmaster" tape ..... physical

Defendant's Exhibit 10: a piece of plaintiff's "Conso" "Bestpleat" tape, the sidewall of one of the pockets of which was cut open and weft threads thereof unraveled ..... physical

COMPLAINT

[529] (Filed December 23, 1954)

for a judgment (under 28 U. S. C. 2201) declaring defendant's U. S. patent 2,672,194 invalid and not infringed.

* * * * * * *

3. An actual controversy exists between plaintiff and defendant within the meaning of Section 2201 of Title 28 of the United States Code;—namely, whether plaintiff's drapery-pleater tape exemplified by Plaintiff's Exhibit 1 and plaintiff's pleater hooks shown in Plaintiff's Exhibits 2, 3, 4 & 5 (referred to hereinbelow) are within the valid scope of any of the claims of defendant's U. S. patent 2,672,194 of Plaintiff's Exhibit 6, and whether said patent is valid and infringed by plaintiff's said tape and hooks.

[530] 4. This Court has jurisdiction over defendant under Section 293 of Title 35 of the United States Code;—defendant not having designated any person under 35 U. S. C. 293.

* * * * * * *

6. Beginning about December, 1952 and continuously since then, to date, plaintiff has manufactured and sold and now manufactures and sells drapery-pleating tape or drapery-header tape, exemplified by the specimen hereto attached as Plaintiff's Exhibit 1, to which tape it has at all times also applied its trademark "Bestpleat";—such tape manufactured by plaintiff from December of 1952 to about March or April of 1954 differing from the specimen of Plaintiff's Exhibit 1 in that one end of each of the prong-receiving pockets thereof (which pockets extend crosswise of the tape) was closed, while in such tape manufactured by plaintiff since about March or April of 1954 both ends of each prong-receiving pockets are open, as in the specimen of Plaintiff's Exhibit 1.

7. Beginning about December 1952 and continuously since then, to date, plaintiff manufactured and sold and now manufactures and sells, for use with plaintiff's aforementioned drapery-pleating tape, 4-pronged pleater-hooks shown in plaintiff's printed matter hereto attached as

[531] Plaintiff's Exhibit 2;—to which pleater hooks plaintiff has applied its trademark "Bestpleat".

8. Beginning about March 1954 and continuously since then, to date, plaintiff manufactured and sold and now manufactures and sells 4-pronged pleater-hooks with a hinged pleat-pinching or pleat-locking member, shown in the sheets of drawings hereto attached as Plaintiff's Exhibits 3 and in the several pieces of plaintiff's printed matter hereto attached as Plaintiff's Exhibits 4 & 5, for use with plaintiff's aforementioned drapery-pleating tape;—to which pleater-hooks plaintiff has applied its trademark "Nip-Tite".

9. Defendant is the owner of U. S. patent 2,672,194 issued to her on March 16, 1954 on application Serial No. 135,570 filed by her on December 29, 1949;—a true and complete copy of the specification, claims and drawings of which patent are hereto attached* as Plaintiff's Exhibit 6.

* * * * * * *

11. Defendant and/or her attorney had knowledge of plaintiff's drapery-pleater tape (exemplified by Plaintiff's Exhibit 1) and of plaintiff's pleater-hooks (shown in Plaintiff's Exhibits 3, 4 & 5) soon after plaintiff placed the same on the market and long prior to December 11, 1954 (which is the date of the letters exemplified by Plaintiff's Exhibit 7, written by defendant's Canadian attorney to plaintiff's U. S. customers, charging that said tape and hooks of Plaintiff's Exhibits 1, 2, 3, 4 & 5 infringe defendant's patent 2,672,194).

* * * * * * *

[532] 13. On December 11, 1954, defendant, without any prior notice or warning to plaintiff, had her Canadian attorney (with offices in Toronto) write letters to plaintiff's trade and customers in the United States, namely, the retail stores in the United States regularly selling plaintiff's aforementioned tape and hooks (of Plaintiff's Exhibits 1 to 5, inclusive), and also regularly selling plaintiff's entire line of products indicated in plaintiff's price-list marked Plaintiff's Exhibit 5, which retail stores represent plaintiff's channel of distribution in the United

States for its aforementioned tape, hooks and other products;—said letters charging that said tape and hooks infringe defendant's patent 2,672,194.

14. Plaintiff's Exhibit 7, hereto attached, is a true and complete copy of one of the aforementioned letters written by defendant's Canadian attorney to plaintiff's U.S. customers;—the other of said letters being like the one of Plaintiff's Exhibit 7.

15. Defendant has not instituted any suit charging that the manufacture, sale or use of any of plaintiff's pleater-hooks or any combination thereof, infringe her patent 2,672,194.

* * * * * * *

[533] 18. Defendant's patent 2,672,194 is invalid and void, because the subject matter thereof was anticipated by and did not represent invention over the prior-art, including the following prior patents, and others which plaintiff prays leave to add hereto by amendment when ascertained:

* * * * * * *

(Here followed a list of patents, including the prior-art patents received in evidence as plaintiff's exhibits.)

[534] 19. Claim 5 of patent 2,672,194 is further invalid under the doctrine of the *Lincoln vs. Stewart* case (303 U. S. 545).

20. Claim 5 of patent 2,672,194 is further invalid because drawn to an old and exhausted combination of curtain, tape and hook.

21. The claims of patent 2,672,194 are further invalid because vague and indefinite and because they do not comply with Section 112 of Title 35 of the United States Code.

22. Defendant's patent 2,672,194 is further invalid because subject matter thereof was in public use and on sale in the United States more than one year prior to the filing date of the application upon which said patent was granted.

23. Defendant's patent 2,672,194 is further invalid because the subject matter thereof was abandoned by defendant by the abandonment by her, on October 18, 1947, of her U. S. patent-application Serial No. 630,877 filed by

her on November 26, 1945, addressed to the same subject-matter as that of patent 2,672,194.

* * * * * * *

[535]

WHEREFORE, plaintiff prays that the Court render and issue

A) a preliminary injunction pending the determination of this action and a permanent injunction thereafter, enjoining defendant, her agents and attorneys and all those in active concert with her, from asserting U. S. patent No. 2,672,194 against stores, merchants and users selling or using any of plaintiff's aforementioned products, on account of the sale or use thereof, and

B) a Judgment

declaring U. S. patent No. 2,672,194 not infringed by any of plaintiff's products and that said patent is invalid and void and unenforceable, and

* * * * * * *

CONSOLIDATED TRIMMING CORPORATION

Counsel for plaintiff *by attorney for plaintiff*

[537] **Plaintiff's Exhibit 1**

Plaintiff's Exhibit 3-a

[539]

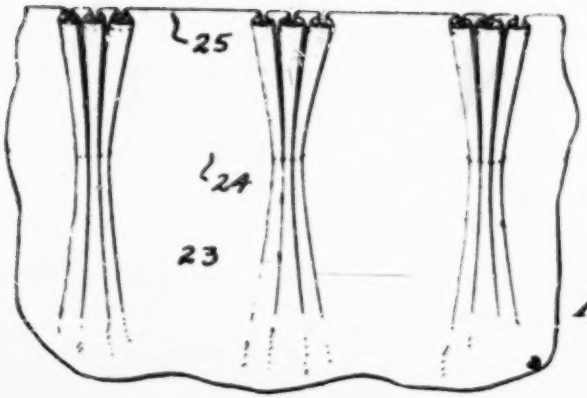

Fig. 1.

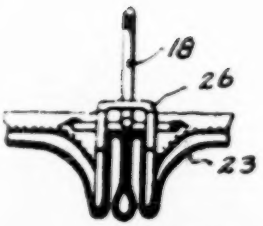

Fig. 3.

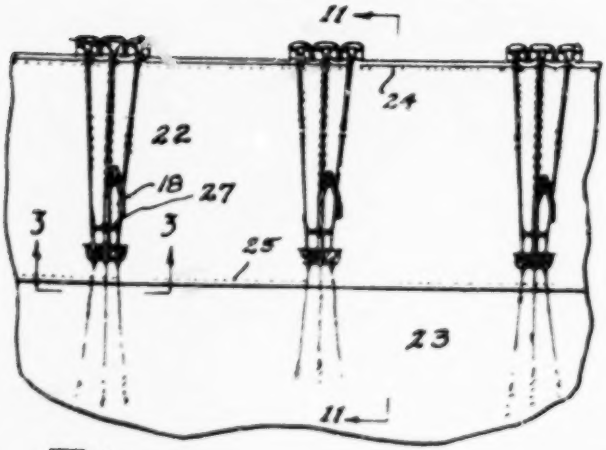

Fig. 2.

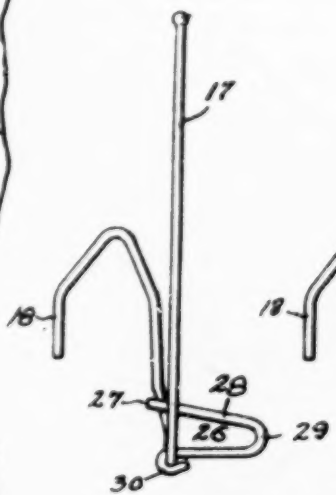

Fig. 6.

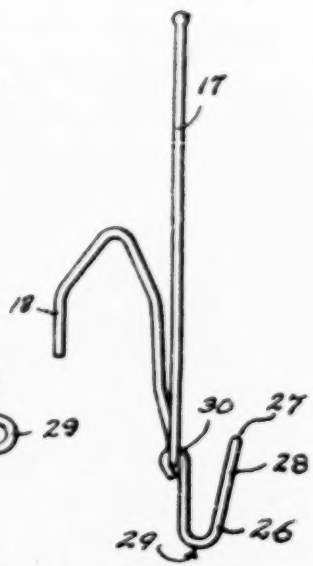

Fig. 7.

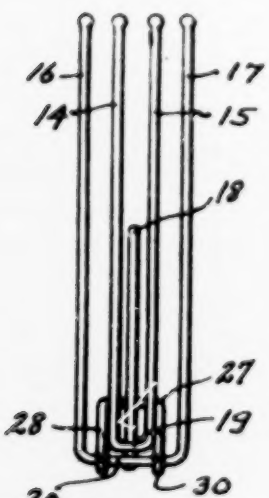

Fig. 4.

Fig. 5.

[540] **Plaintiff's Exhibit 3-b**

Fig. 8.

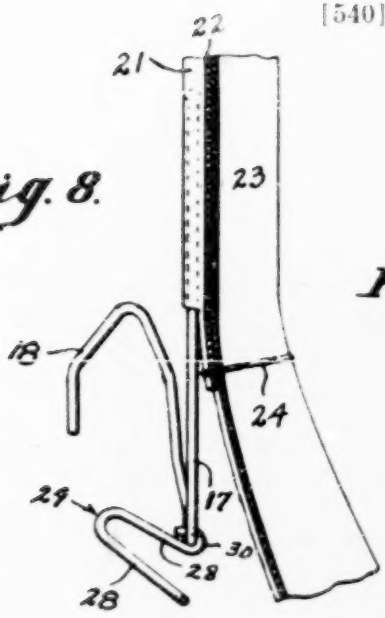

Fig. 9.

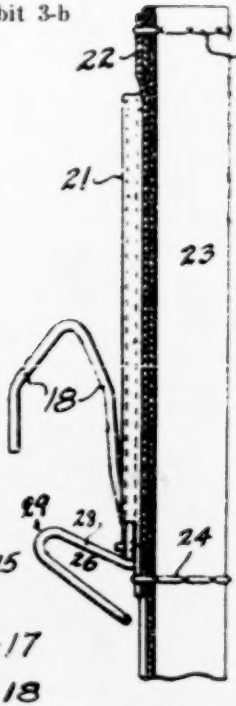

Fig. 12.

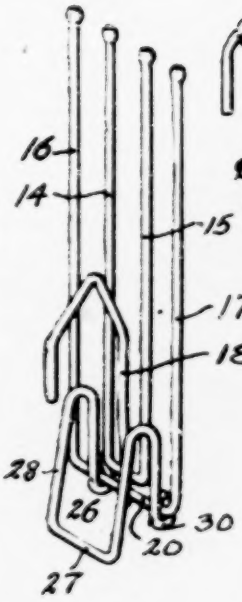

Fig. 10.

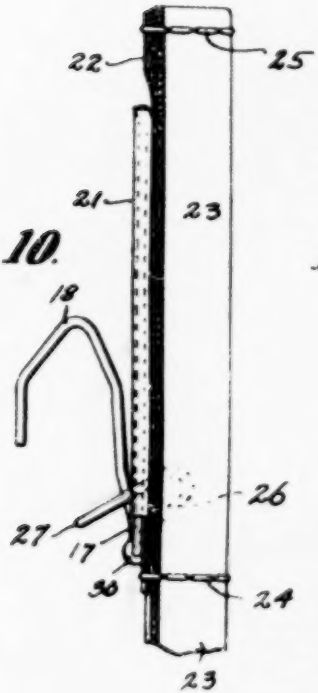

Fig. 13.

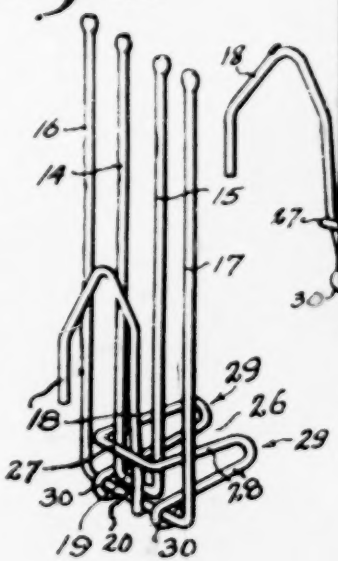

Fig. 11.

Plaintiff's Exhibit 7

[544]

WEGENAST AND HYNDMAN
Barristers, Solicitors, &c.

43 King Street West
TORONTO
11th December, 1954.

Messrs. Stern Bros.
41 West 42nd Street,
New York, N. Y.

Attention of Mr. T. W. McLeod.

Dear Sirs,

Our client, Mrs. Florence F. Loudon, is the inventor of a novel drapery hanger construction which is in the form of multiple-prong drapery supporting hooks and cooperating header strips or tapes which are attached to the top of the drapes. Mrs. Loudon manufactures and sells these drapery hooks and header strips in Canada, and has additional licensed manufacturers in Canada. She was granted a patent in the United States, No. 2,672,194, which covers her drapery supporting hooks alone, and also in combination with the header strips or tapes.

A number of companies in the United States have started manufacturing and selling drapery hooks and header strips or tapes which simulate those developed by Mrs. Loudon, and which constitute infringements of her patent. Such drapery hooks and tapes have been manufactured and sold as follows: the "Pleat Master" by Judd Manufacturing Company; the "Pleat-Right" by Plasti-Glow Company; the "Newell" by Newell Manufacturing Company; the "Conso" by Consolidated Trimmings, Ltd.; and a device manufactured by Eastern Venetian Blind Company.

The Kirsch Company has obtained a license from Mrs. Loudon under her patent, and that company manufactures and sells the "Easy Pleat" drapery hooks and header strips throughout the United States. No other manufacturer or dis-

tributor in the United States has been granted a license by Mrs. Loudon.

Mrs. Loudon has been informed that some or all of the above-named infringing devices have been, or are being sold by you. She has therefore instructed us to write to you to draw your attention to her patent, and to ask you to let us have your undertaking that you will discontinue further sale of devices which constitute infringements of her patent. In the absence of such an undertaking by you, Mrs. Loudon will be compelled to take appropriate action to protect the exclusive rights granted to her under her patent.

Yours very truly,

WEGENAST & HYNDMAN.

By M. P. HYNDMAN.

AFFIDAVIT OF ELI FREYDBERG

[546] (Filed December 23, 1954)

(this Affidavit and the Exhibits referred to therein were served simultaneously with the Complaint)

State of New York,
County of New York ss

I, Eli Freydberg, being duly sworn, deposes and says:

I am of lawful age, treasurer of plaintiff, and I have been associated with plaintiff continuously since April of 1951 and I am familiar with the subject matter of this suit.

I submit herewith, as Plaintiff's Exhibit 8, a specimen of plaintiff's "Bestpleat" pleater-hook shown in the printed matter of Plaintiff's Exhibit 2 annexed to the Complaint.

I submit herewith as Plaintiff's Exhibit 9 a sample of plaintiff's "Nip-Tite" pleater-hook shown in the drawings of Plaintiff's Exhibits 3 and in the printed matter of Plaintiff's Exhibits 4 & 5 annexed to the Complaint.

* * * * * * *

[548] Plaintiff's pleater-tape exemplified in Plaintiff's Ex-

hibit 1, the only pleater-tape which plaintiff has manufactured and sold since the Spring of 1954, does not have any of its "pockets" closed at their upper ends.

Plaintiff's pleater-hooks are illustrated in the drawings of Plaintiff's Exhibits 3-a & 3-b annexed to the Complaint.

* * * * * * *

/s/ ELI FREYDBERG

PLAINTIFF'S INTERROGATORIES UNDER RULE 33

[552] (Filed December 23, 1954)

1. Give the names and addresses of all persons, firms and corporations to whom defendant or her attorney or agent sent any letter charging or implying that any of plaintiff's products are deemed by defendant or her attorney to infringe patent 2,672,194, and give the respective dates of such letters.

2. State whether such letters differed in any respect from the letter of which a copy is annexed to the Complaint as Plaintiff's Exhibit 7, and, if so, annex a copy of such letters which differed from Plaintiff's Exhibit 7.

* * * * * * *

[553]

5. State whether, prior to writing each of the letters referred to in foregoing Interrogatory 1 or prior to the conversations referred to in Interrogatory 3, defendant or her representative obtained a specimen of plaintiff's accused products from each of the retailers to whom defendant or her attorney or representative has written or to whom any of them spoke charging or implying infringement, and, if so, state the date upon which and the name and address of the retailer from whom such specimens of plaintiff's products were obtained and state whether the specimen of plaintiff's pleater-tape had both ends of each prong-receiving pocket open and whether plaintiff's pleater-hooks of which specimens so obtained were of the

form shown in Plaintiff's Exhibits 2, 3, 4 and 5 annexed to the Complaint.

* * * * * * *

Counsel for plaintiff *Attorney for plaintiff*

PLAINTIFF'S INTERROGATORIES UNDER RULE 33

(filed January 6, 1955)

[564]

13. Give the names and addresses of all retail stores who (or whose attorneys or representatives) have written to or spoken to defendant's attorney responsive to [illegible] as a result of the letters referred to in paragraphs 13 and 14 of the Complaint and Interrogatory 1 (filed December 23 and served December 27, 1954).

* * * * * * *

Counsel for plaintiff *Attorney for plaintiff*

ANSWERS TO INTERROGATORIES PROPOUNDED BY PLAINTIFF

(filed Jan. 11, 1955)

[589]

Interrogatory No. 1: The names and addresses of those to whom defendant or her attorney or agent sent letters charging or implying that plaintiff's products are deemed by defendant or her attorney to infringe Patent 2,672,194 are as follows:

New York, N. Y.: Gimbel Brothers; Hecht Brothers; Lord & Taylor; Macy's; John Wanamaker; Stern Brothers; Saks & Company.

Philadelphia, Pa.: Frank & Seder; Gimbel Brothers; Strawbridge & Clothier; John Wanamaker.

[590] Pittsburgh, Pa.: Gimbel Brothers; Joseph Horne Company; Pittsburgh Mercantile Co.

Detroit, Mich.: Crowley, Milner Co.; J. L. Hudson Co.; Sam's; Ernest Kern Co.

Chicago, Ill.: Marshall Field & Co.; Montgomery Ward & Co.; Sears, Roebuck & Co.; Mandel Brothers, Inc.

Los Angeles, Cal.: The May Co.; The Broadway Department Store.

San Francisco, Cal.: The Emporium; The White House.

Sacramento, Cal.: The Eastern.

Washington, D. C.: Woodward & Lothrop.

Cleveland, Ohio: The Bailey Co.; The Halle Co.

[591] Milwaukee, Wis.: A Golmann & Sons; T. A. Chapman Co.

Minneapolis, Minn.: L. S. Donaldson Co.; Powers Dry Goods Company, Inc.

Indianapolis, Ind.: William Block.

All of these letters were dated between the 11th December and the 21st December, 1954.

Interrogatory No. 2: No.

* * * * * * *

Interrogatory No. 5: A representative of defendant visited a number of stores on August 20, 1954, and August 23, 1954, including Bloomingdale's Stern Brothers, Gimbel Brothers and Macy's in New York City. At one or more of these stores the representative purchased infringing devices made by plaintiff and other manufacturers referred to in the letters, such as Plaintiff's Exhibit 7, and saw such devices at others of the stores visited, and the representative cannot now remember at which of these stores the purchases were made. */s/* FLORENCE F. LOUDON

PLAINTIFF'S MOTION FOR AN ORDER TO COMPEL DEFENDANT FULLY TO ANSWER PLAINTIFF'S INTERROGATORIES 5 AND 6

(Filed January 20, 1955)

[635] Plaintiff moves for an Order requiring defendant fully to answer Plaintiff's Interrogatories 5 and 6.

In support of this Motion plaintiff submits that defendant's Answers (served January 10, 1955 and filed January 11, 1955) to Plaintiff's Interrogatories 5 and 6 (filed December 23, 1954 and served December 27, 1954) are not fully responsive and are incomplete, in the following respects.

Plaintiff's Interrogatory 5 calls for the following:
5-a. State whether, prior to writing each of the letters referred to in foregoing Interrogatory 1 or prior to the conversations referred to in Interrogatory 3, defendant or her representative obtained a specimen of plaintiff's accused products from each of the retailers to whom defendant or her attorney or representative has written or to whom any of them spoke charging or implying infringement, and, if so, state
5-b. the date upon which such specimens of plaintiff's products were obtained,
5-c. the name and address of the retailer from whom such specimens of plaintiff's products were obtained
5-d. state whether the specimen of plaintiff's pleater-tape (so obtained) had both ends of its prong-receiving pockets open
5-e. state whether plaintiff's pleater-hooks of which specimens were so obtained, were of the form shown in plaintiff's Exhibits 2, 3, 4 and 5 annexed to the Complaint.

[636] Defendant's Answer (served and filed as aforesaid) do not provide any answer to parts 5-d and 5-e, and do not relate the specimens of plaintiff's products to any particular one of the several retailers named in the Answer nor to any particular date.

* * * * * * *

Counsel for plaintiff *Attorney for plaintiff*

PLAINTIFF'S INTERROGATORY UNDER RULE 33

[637] (Filed January 20, 1955)

33. Give the name and address of defendant's representative if there is one such representative or the names and addresses of defendant's representatives if there is more than one such representative, referred to in defendant's Answer served January 10, 1955 to plaintiff's Interrogatory 5 served December 27, 1954.

Counsel for plaintiff *Attorney for plaintiff*

QUALIFIED CONSENT TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

(Filed January 21, 1955)

[639]

Defendant, without submitting her person to the jurisdiction of this Court, and without waiving any insufficiency or limitation in the service of process, hereby consents to the granting of plaintiff's motion for preliminary injunction and, independently of the personal jurisdiction of this Court, undertakes for herself and those in privity with her to abide by the terms of such injunction.

Counsel for defendant *Attorney for defendant*

AMENDMENT TO COMPLAINT

(Filed February 7, 1955)

[644]

Plaintiff hereby amends paragraphs 16 and 17 of its Complaint by substituting the following paragraphs 16-a and 16-b for paragraph 16 of its Complaint and by substituting the following paragraphs 17-a, 17-b, 17-c & 17-d for paragraph 17 of its Complaint.

16-a. Plaintiff's aforementioned pleater-hooks are not within the prima facie scope of any of Claims 1 to 4, inclusive, of defendant's patent 2,672,194 (which are the only Claims of said patent addressed to a pleater-hook, per se).

16-b. Plaintiff's aforementioned pleater-hooks are not within the legal scope of and do not infringe any of Claims 1 to 4, inclusive, of defendant's patent 2,672,194.

17-a. The combinations of

plaintiff's aforementioned tape as manufactured up to about March or April of 1954

and

plaintiff's aforementioned hooks

do not fully satisfy, meet or respond to the prima facie requirements of Claim 5 of defendant's patent 2,672,194

(which is the only Claim of said patent addressed to a combination including a pleater-hook and a pleater-tape).

[645] 17-b. The combinations of

plaintiff's aforementioned tape as manufactured up to about March or April of 1954

and

plaintiff's aforementioned hooks

do not fully satisfy, meet or respond to the requirements of the legal scope of Claim 5 of defendant's patent 2,672,194.

17-c. The combinations of

plaintiff's aforementioned tape as manufactured since about March or April of 1954

and

plaintiff's aforementioned hooks

do not fully satisfy, meet or respond to the prima facie requirements of Claim 5 of defendant's patent 2,672,194.

17-d. The combinations of

plaintiff's aforementioned tape as manufactured since March or April of 1954

and

plaintiff's aforementioned hooks.

do not fully satisfy, meet or respond to the requirements of the legal scope of Claim 5 of defendant's patent 2,672,194.

Attorney for plaintiff *Counsel for plaintiff*

ANSWER TO AMENDED COMPLAINT

(filed February 11, 1955)

[646]

1. The allegations of Paragraphs 1, 2, and 3 of the Amended Complaint are admitted.

2. The allegation in Paragraph 4 of the Amended Complaint that defendant has not designated any person under 35 U. S. C. §293 is admitted, but each and every remaining allegation of said paragraph is denied.

3. Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5, 6, 7, and both of the paragraphs numbered 8 in the Amended Complaint, and accordingly denies the same and leaves plaintiff to its proofs.

[647] 4. The allegations of Paragraphs 9 and 10 of the Amended Complaint are admitted.

5. Defendant denies that some or all of the letters exemplified by Plaintiff's Exhibit 7 were written to plaintiff's customers, but admits the remaining allegations of Paragraph 11 of the Amended Complaint.

. . . . . .

7. Defendant denies that some or all of the letters she wrote as alleged in Paragraphs 13 and 14 of the Amended Complaint were sent to plaintiff's trade and customers, and that said letters were written without any prior notice or warning to plaintiff, but admits the remaining allegations of said paragraphs.

8. The allegations of Paragraph 15 of the Amended Complaint are admitted.

9. Each and every allegation of Paragraphs 16-a, 16-b, 17-a, 17-b, 17-c, 17-d, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of the Amended Complaint is denied.

. . . . . .

Counsel for defendant *Attorney for defendant*

PLAINTIFF'S REQUESTS FOR ADMISSIONS UNDER RULE 36

(filed Feb. 23, 1955)

[650]

1) That the pleater-tape, a specimen of which is annexed to the Complaint as Plaintiff's Exhibit 1 (and a duplicate specimen of which was served on defendant along with the service of the copy of the Complaint) is the same as or exemplifies plaintiff's pleater-tape which defendant's representative purchased in retail stores between August 20, 1954 and August 23, 1954 as stated in Defendant's Answer (filed January 11, 1955) to Plaintiff's Interrogatory No. 5.

2) That the pleater-hook shown in plaintiff's printed matter attached to the Complaint as Plaintiff's Exhibit 2, and a specimen of which accompanied the Affidavit of Eli Freydberg (filed December 23, 1954) as Plaintiff's Exhibit 8 (and duplicate specimens of which Plaintiff's Exhibits 2 and 8 were served on defendant along with the service of the copy of the Complaint and with the service of the aforementioned Affidavit) is the same as or exemplifies plaintiff's pleater-hook which defendant's representative purchased in retail stores between August 20, 1954 and August 23, 1954 as stated in Defendant's Answer (filed January 11, 1955) to Plaintiff's Interrogatory No. 5.

[651] 3) That the pleater-hook shown in plaintiff's printed matter attached to the Complaint as Plaintiff's Exhibit 3, and a specimen of which accompanied Affidavit of Eli Freydberg (filed December 23, 1954) as Plaintiff's Exhibit 9 (and duplicate specimens of which Plaintiff's Exhibits 3 and 9 were served on defendant along with the service of the copy of the Complaint and with the service of the aforementioned Affidavit) is the same as or exemplifies plaintiff's pleater-hook which defendant's representative purchased in retail stores between August 20, 1954 and August 23, 1954 as stated in Defendant's Answer (filed January 11, 1955) to Plaintiff's Interrogatory No. 5.

Counsel for plaintiff *Attorney for plaintiff*

ANSWERS TO INTERROGATORIES PROPOUNDED BY THE PLAINTIFF

(filed February 28, 1955)

Interrogatory No. 13·

[677] Gimbel Brothers, Philadelphia, Pa.; J. L. Hudson Company, Detroit, Mich.; The Halle Bros. Co., Cleveland, Ohio; Woodward Lathrop, Washington, D. C.; John Wanamaker, Inc., Philadelphia, Pa.; John Wanamaker, Inc., New York; Sears, Roebuck & Co., Chicago, Ill.; The May Co., Los Angeles, Cal.; The Emporium Capwell Co., San Francisco, Cal. The Ernest Kern Co., Detroit, Mich.; Lord

& Taylor, New York; Wm. H. Block Co., Indianapolis, Ind.; The Bailey Co., Cleveland, Ohio; A. Goldman & Sons, Milwaukee, Wis.

* * * * * * *

Interrogatory Number 33: Mrs. Margaret Mayer, 102-40, 67th Drive, Apartment 6L, Forest Hill, Long Island, N. Y.

Interrogatory Number 5-a: No.

* * * * * * *

/s/ FLORENCE F. LOUDON

(1) Trial before the Honorable F. Dickinson Letts, commenced on the morning of March 23, 1955.

Albert H. Kirchner, Esq. and Leonard L. Kalish, Esq. appeared on behalf of plaintiff.

Miles D. Pillars, Esq., William C. Conner, Esq. and Daniel L. Morris, Esq. appeared on behalf of defendant.

* * * * * * *

[24] MR. KALISH: I offer in evidence as Plaintiff's Exhibit No. 7 a copy of letter dated December 11, 1954, written by Margaret P. Hyndman, of Toronto, to Messrs. Stern Brothers of 41 West 42nd Street, New York City, which is a department store in New York. This likewise has been admitted by the answer to the complaint.

* * * * * * *

[25] MR. CONNER: If it please the court, we have admitted the existence of a controversy, and it is not in issue as to whether there is a controversy. We have admitted the controversy.

MR. KALISH: That is not quite accurate, because simultaneously with the filing of the complaint, I filed and served interrogatories addressed to the defendant. Since then I have addressed additional interrogatories and requests for admissions. And the ones I now speak of . . . were all aimed to elicit from the defendant an answer to this question: Upon what particular product of this plaintiff was that letter based?

And we got a partial answer, and the partial answer was this: That on August 20 and 23, 1954, months before that letter was written, a representative of the plaintiff, who I have since learned is one of the secretaries in Mr. Conner's office, went around to the department stores and there purchased and examined plaintiff's products, plaintiff's tape and plaintiff's hooks.

I also asked, both in the interrogatories and in the requests for admissions, whether the products so examined by Mrs. Meyer, I think was her name, the secretary in Mr. [26] Conner's office, whether the products purchased at

that time were like Plaintiff's Exhibit 1 as to the tape, and like Plaintiff's Exhibits 8 and 9 as to the pleater. So far I haven't gotten any answer.

* * * * * * *

I then got a letter from Mr. Conner saying he would answer them last Monday, day before yesterday. I still haven't got an answer and I don't have an answer yet. . . . Mr. Conner . . . told me over the phone not once but three times that he would admit those requests; he would admit that what was purchased in August was the same as Plaintiff's Exhibits 1, 8 and 9, but I [27] haven't seen it on the record.

So that there is not yet a full admission as to what the controversy is about.

* * * * * * *

MR. CONNER: Your honor, what I told Mr. Kalish was that if I had time I would get out the answers, which are not due until today, Your Honor, and if I didn't have time to get them out I would make the admission in open court, and I do make the admission now, that the samples of hooks and tape, which are attached to the complaint, are substantially identical with the samples which our representative purchased in August.

* * * * * * *

[28] THE COURT: How did you state the admission which you requested?

MR. KALISH: May I just go to the admission itself?

Request No. 1: That the pleater tape, a specimen of which is annexed to the complaint as Plaintiff's Exhibit 1 (and a duplicate specimen of which was served on defendant along with the service of a copy of the complaint) is the same as or exemplifies plaintiff's pleater Tape which defendant's representative purchased in retail stores between August 20, 1954, and August 23, 1954, as stated in defendant's answer (filed January 11, 1955) to plaintiff's interrogatory No. 5.

Request No. 2: That the pleater-hook shown in plaintiff's printed matter attached to the complaint as Plaintiff's Exhibit 2, and a specimen of which accompanied the

affidavit of Eli Freydberg filed December 23, 1954, as [29] Plaintiff's Exhibit 8 (and a duplicate specimen of which plaintiff's Exhibits 2 and 8 were served on defendant along with the service of a copy of the complaint and with the service of the aforementioned affidavit) is the same as or exemplifies plaintiff's pleater-hook which defendant's representative purchased in retail stores between August 20, 1954, and August 23, 1954, as stated in defendant's answer (filed January 11, 1955) to plaintiff's interrogatory No. 5.

The third (Request for Admission) is the same as No. 2, but it is addressed to the other pleater-hook, and I will just read it:

No. 3: That the pleater-hook shown in the printed matter attached to the complaint as Plaintiff's Exhibit 3, and a specimen of which accompanied the affidavit of Eli Freydberg (filed December 23, 1954) as Plaintiff's Exhibit 9 (and duplicate specimens of which Plaintiff's Exhibits 3 and 9 were served on defendant along with the service of a copy of the complaint and with the service of the aforementioned affidavit) is the same as or exemplifies plaintiff's pleater-hook which defendant's representative purchased in retail stores between August 20, 1954, and August 23, 1954, as stated in defendant's answer filed January 11, 1955, to plaintiff's interrogatory No. 5.

Now, those are the three requests.

[30] THE COURT: Mr. Conner, are you prepared to make for the record the admission requested?

MR. CONNER: Yes, sir, Your Honor.

THE COURT: And made as requested?

MR. CONNER: Yes, sir.

THE COURT: Then I think that serves your purpose.

* * * * * * *

[52] BERNARD LEONARD POLKOSNIK was called as a witness by the plaintiff.

DIRECT EXAMINATION BY MR. KALISH:

* * * * * * *

[53] Q. And what is your occupation? A. I am presi-

dent and general manager of The Wire Novelty Manufacturing Company.

* * * * * * *

Q. What is that concern's business? What business is that concern engaged in? A. Metal goods fabrication.

Q. And what type of metal process do you employ generally? A. Such processes as are applied to the fabrication of wire, of sheet metal; also of machined metal.

Q. In other words, you do what is commonly called metal stamping work? A. Yes.

Q. And wire-forming work? A. Yes.

Q. What is your education? A. I am a mechanical engineer. I graduated from Sheffield Scientific School of Yale in 1919.

Q. And what have you done since then? A. I have been in manufacturing continuously since then.

Q. What type of products? A. Small products of the general nature as I am [54] manufacturing today.

Upon leaving college I spent three years with Scovill Manufacturing Company.

Q. Where? A. In Waterbury.

Q. And what type business are they in? A. At that time they had about 40,000 customers, manufacturing small items, anything from tire valves to miner's lamps, and sheet metal and wire-formed items of all types.

Q. And in what capacity did you serve them? A. As a student engineer, and finally as an assistant to the mechanical superintendent.

Q. And what other experience have you had since then? A. I spent about three years in the design of heavy machinery, namely, a locomotive booster, following my stay with Scovill, and subsequently connected with the Pressed Steel Engineering Corporation, which manufactured visible and vertical index cabinets.

Q. Where were they? A. That was in Long Island City, New York, but I moved the plant to Derby, Connecticut, in 1926.

Q. How long were you with them? A. Until 1934.

Q. In what capacity? [55] A. As president and then as owner of the corporation.

Q. And what did you do since? A. In 1934 we merged with the Wire Novelty Manufacturing Company, and I have been with it ever since.

Q. About how many people do you employ? A. About 200.

Q. And do you have working with you or under you mechanics engaged in developing wire and sheet metal products? A. Yes.

Q. Have you at my request made up specimens exemplifying some of the prior patents which have just been offered in evidence? A. I have.

Q. I call your attention to the Nachmann patent, which is Plaintiff's Exhibit 22, and ask you if you have made up —your plant—a physical embodiment of what is shown in Figure 3 of the Nachmann patent. A. Yes.

Q. Do you have it with you? A. We made this (indicating).

Q. Is that a full replica of what is in the patent? A. It is.

* * * * * * *

[56] Device, (physical) of Figure 3 of drawings of the Nachmann patent, were marked for identification as Plaintiff's Exhibit No. 22-A.

Q. Have you also had made up for me, at my request, a physical embodiment of what is shown in Figures 2 and 3 of the British patent to Knight, which is Plaintiff's Exhibit 23? A. Yes.

Q. And is that it (indicating)? A. That is it.

* * * * * * *

[57] Knight's (British) patent No. 24,522 issued in 1904 was marked for identification as Plaintiff's Exhibit No. 23-A.

Q. I now ask you to turn to Plaintiff's Exhibit No. 24, the Carr patent, and ask if you have had made up in your plant an embodiment of the pleater of what is called the curtain suspension hook in Carr, as shown particularly in Figures 1 and 2? A. I did.

Q. Is this it? A. Yes, that is it.

Q. In making up these physical embodiments of what is shown in the drawings, did you also at my request make the fingers long enough to be put into the tape of the plaintiff in this case? A. I did.

Q. In other words, you increased the length so that they would fill the pocket? A. Yes, sir.

Q. But otherwise the proportions are the same? A. Yes.

[58] Device (physical) of Figures 1 and 2 of drawings of the Carr patent was marked for identification as Plaintiff's Exhibit No. 24-A.

Q. Did you also at my request make up a specimen or exemplifying physical embodiment of the device shown in Figures 4 and 5 of the British patent to Ashwell, which is Plaintiff's Exhibit No. 25? A. I did.

Q. And is this the device? A. It is.

Device (physical) of Figures 4 and 5 of drawings of Ashwell patent was marked for identification as Plaintiff's Exhibit No. 25-A.

Q. Did you also make up similarly a physical embodiment of the device shown in Figures 1 and 2 of this same Ashwell patent? A. I did.

Q. And is this the device? A. It is.

[59] Device (physical) of Figures 1 and 2 of drawings of Ashwell patent was marked for identification as Plaintiff's Exhibit No. 25-B.

Q. Did you also make up a physical embodiment of the device shown in Figures 2 and 3 of the Jantzen patent, which is Plaintiff's Exhibit No. 26? A. I did.

Q. And is this the device? A. It is.

Device (physical) of Figures 2 and 3 of drawings of Jantzen patent was marked for identification as Plaintiff's Exhibit No. 26-A.

Q. Did you also similarly make up a physical embodiment of the device, that is the metallic hook part, shown

in the drawings of the British patent to Charlton, which is Plaintiff's Exhibit No. 29? A. I did.

Q. And is this the device you so made up? A. It is.

[60] Device (physical) of Figure 2 of drawings of Charlton patent was marked for identification as Plaintiff's Exhibit No. 29-A.

Q. Did you also make up a physical embodiment of the pleater as shown in the drawings of the Steiner patent, which is Plaintiff's Exhibit No. 31? A. Yes.

Q. And is this the device? A. Yes, that's it.

Device (physical) of Figure 4 of drawings of Steiner patent was marked for identification as Plaintiff's Exhibit No. 31-A.

Q. Did you also make up a physical embodiment of the device shown in Figure 8 of the patent issued to George F. French, No. 2,183,188, which is Plaintiff's Exhibit No. 32? A. Yes.

Q. And is this the device? A. That's it.

[61] Device (physical) of Figure 8 of drawings of the French patent, No. 2,183,188, was marked for identification as Plaintiff's Exhibit No. 32-A.

Q. Did you also make up a pleater which is the physical embodiment of the device shown in Figure 42 of the Roger French patent, No. 2,252,070, which is Plaintiff's Exhibit No. 34? A. Yes.

Q. Is this the device? A. Yes.

Device (physical) of Figure 42 of the drawings of French patent, No. 2,252,070, was marked for identification as Plaintiff's Exhibit No. 34-A.

Q. Did you also make up another exemplification of the same device of Figure 42 of this French patent, Plaintiff's Exhibit No. 34, but in which the outer fingers were made longer, namely, as long as the inner fingers? A. Yes.

Q. Is this the device? A. That's it.

[62] Device (physical) of Figure 42 of drawings of French patent, No. 2,252,070, but with the length of the two outer fingers increased to equal that of the inner fingers, was marked for identification as Plaintiff's Exhibit No. 34-B.

Q. Did you also make up a physical embodiment of the device shown in Figure 4 of Perlmutter's patent, No. 2,512,376, which is Plaintiff's Exhibit No. 36? A. Yes.
Q. Is this the device? A. It is.

Device (physical) of Figure 4 of drawings of Perlmutter patent, No. 2,513,376, was marked for identification as Plaintiff's Exhibit No. 36-A.

Q. Did you also make up a device, which is a physical embodiment of the device shown in Solomon's patent, No. 2,524,403, which is Plaintiff's Exhibit No. 37? A. Yes.
Q. And is this the device? A. Yes.

[63] Device (physical) of drawing of Solomon patent, No. 2,524,403, was marked for identification as Plaintiff's Exhibit No. 37-A.

Q. Did you also make up a physical embodiment of the pleater device, as shown in the drawings of Perlmutter's patent, No. 2,553,272, which is Plaintiff's Exhibit No. 38, particularly the modification indicated in Figure 5 of this patent? A. Yes.
Q. And is this the device you made up? A. Yes.

Device (physical) of Figure 5 of drawings of Perlmutter patent, No. 2,553,272, was marked for identification as Plaintiff's Exhibit 38-A.

Q. I show you two devices and ask you if you can tell us whether these are true physical exemplifications, physical embodiments, of the wire hook, which is designated generally by the reference numbered 14, in Figures 4 and 5, [64] and also the other figures of the Vance patent, which is Plaintiff's Exhibit No. 30? A. Yes, with the exception that they have the offset in addition to what the drawing shows.

Q. And they are two different sizes? A. That's right.

Q. But are they substantially the same? A. They are substantially the same as shown on the drawing.

Device (physical) of Figure 5 of drawings of the Vance patent (3¼ inches long) was marked for identification as Plaintiff's Exhibit No. 30-A.

Device (physical) of Figure 5 of drawings of the Vance patent (2¼ inches long) was marked for identification as Plaintiff's Exhibit No. 30-B.

[66] Q. Mr. Polkosnik, have you examined the Loudon patent here in suit? A. Yes.

Q. Have you also examined the prior patents of which you made these physical embodiments? A. Yes.

Q. Are you familiar with the devices and construction shown in the Loudon patent? A. Yes.

Q. And are you also familiar now with the devices shown in these patents of which you made these physical embodiment? A. Yes.

Q. Would you state whether the differences, if any, between the hook, or I guess what is called the pleater in the Loudon patent, and the device shown in the Ashwell patent are such as would have been obvious to a person skilled in the art prior to December 29, 1949?

MR. CONNER: Objection, Your Honor. I don't believe this witness has been qualified as a man skilled in the drapery art, and I don't think that he ought to be permitted to answer a very controversial opinion question.

[67] I believe that the information which is sought relates to a question which the Court alone can decide.

THE COURT: The Court thinks that is a question for the Court.

* * * * * * *

[68] MR. KALISH: I will qualify this witness a little further, then, if I may.

THE COURT: Yes.

* * * * * * *

Q. Have you ever manufactured drapery pleaters out of wire? A. Yes.

Q. And how long have you been doing that? [69] A. Some three to four years.

Q. And in connection with your manufacture of these drapery pleaters, have you had occasion to familiarize yourself, from a practical standpoint, with the problems in the pleating and hanging of draperies? A. Yes, I have.

Q. And have you also during this time filed in the United States Patent Office a patent application on a drapery pleater? A. I have.

Q. And is that the patent application of the drapery pleater which is Plaintiff's Exhibit 9 in this case? A. Yes.

MR. KALISH: I renew my question. I think the witness is eminently qualified, but I submit he would be qualified if he had never been in the drapery pleater manufacture.

MR. CONNER: Your Honor, the statute which my very capable opponent referred to a moment ago states that the patent is invalid if the invention covered thereby would have been obvious to one having ordinary skill in the art at the time the invention was made.

I believe he said he commenced the manufacture of drapery pleater hooks four years ago. The invention in question was made in 1945.

[71] MR. KALISH: I am offering this witness as an expert to testify, and he was in the metal manufacture as early as 1919, which is early enough. This application was filed in 1949. By that time he was in the metal manufacture for 30 years, and in those 30 years he learned something about metal forming.

THE COURT: Then you don't think that the art that is mentioned is the art of making articles of this character and for the purpose for which they are intended by a general art?

MR. KALISH: So far as the metal part is concerned, it relates to metal forming. In so far as it relates to drapery, this man has familiarized himself with drapery for the last three years, and in the last three years he learned what it takes to make drapery. Now, he can apply that knowledge to say to the Court whether it would have been obvious to a person skilled in the art prior to December, 1949, to make this or that change in the pleater. That is my position.

THE COURT: Objection sustained.

* * * * * * *

[72] CROSS-EXAMINATION BY MR. CONNER:

Q. Mr. Polkosnik, I wish you would take this patent to Knight, that is the British patent No. 24,522, which is in evidence as Plaintiff's Exhibit No. 23, and if you please, sir, compare it with this hook, which is in evidence as Plaintiff's Exhibit No. 23-A, and point out to the Court the differences between that hook and what is shown in the patent.

THE COURT: Now, when you speak of the hook, you mean the whole device?

MR. CONNER: Yes, sir. I believe Mr. Kalish has used the expression, the "pleater".

THE COURT: But you mean the whole device?

MR. CONNER: Yes, sir.

[73] A. The patent speaks of three claws arranged in a triangular fashion from which a hook is projected. This has three claws in a triangular fashion, and this has a hook here. Consequently it answers the requirements of the description of the patent, and it is long enough here to intermember with the tape that is on the market today, a wide piece of tape. Maybe the proportions are not exactly the same as the patent, but the elements of the drawings of the patent are in this hook.

Q. Where do you find in the patent drawings three fingers? A. "Three claws arranged in triangular form"?

Q. Is that shown in the patent drawing? A. Yes, it is. There is one finger here (indicating) and then two here in this view, and the side view shows one and two here. There are three fingers there.

Q. When you say there are three fingers, which of the figures of the patent are you referring to, sir? Both Figures 2 and 3? A. Both Figures 2 and 3. These drawings, together with a description indicate that there are three fingers; that there is one here, one back of that, and a third one here—that is those looking at it—and in this other view [74] with the short one stopping off here with the third one.

Q. Are all three fingers shown in the drawing? A. They are, yes.

Q. You refer to Figure 3? A. Figures 2 and 3. It is difficult with one of these figures to ascertain exactly what is shown, but with the description and the figures it is readily seen that they refer to three fingers.

Q. Are those fingers identified by reference numerals or letters in the figures of the drawings? A. D, E, and F.

Q. The three fingers of this hook, Exhibit 23-A, I believe you said are made substantially longer than the fingers of the hook of the patent drawing, is that correct? A. Yes.

Q. Who told you to make them longer? A. Mr. Kalish.

Q. And you followed his instructions and not merely the disclosure of the patent? A. So far as size is concerned, yes, I followed his instructions.

Q. Will you compare the hook, Plaintiff's Exhibit No. 23-A, with the figures of the drawings of Plaintiff's Exhibit No. 23, and compare the spacing between the fingers of the hook in the drawing with the spacing between the fingers of [75] the specimen hook, Plaintiff's Exhibit No. 23-A? A. I am sure I don't know what you are referring to, actually. We have made no attempt to scale a drawing on an old patent in order to get the spacing exactly the same as it is on that sketch or drawing, which at best is probably a free-hand drawing, which is only an assump-

tion on my part; but we spaced those fingers so that they would answer the description as brought forth in the patent and yet conform to the drawing in so far as a general overall idea is concerned. My conception of the patent drawing is that it is not necessarily a working drawing where everything has to be scaled to exact dimensions as shown in that drawing and proportioned to that extent. I have always understood a patent drawing to be something to disclose an idea and to disclose a method, or to disclose something that could be altered in manufacture to meet the requirements as they came up in trade. If you needed something longer you made it longer, you made it wider, or you made it narrower.

[76] I ask the witness again to state whether or not the fingers of the hook, Plaintiff's Exhibit No. 23-A, are not more closely spaced than the fingers of the drawing of Figure 2 of the patent, Plaintiff's Exhibit No. 23. A. Yes, they are.

Q. Who told you to space those fingers more closely? A. No one. I simply told the mechanic to make these fingers roughly three and three-eighth inches long, and gave him this patent paper. When he came back he probably took the spacing that he thought was on the drawing paper by extending the fingers, and the result is what we have here. The spacing is slightly different than this; also in that you might argue that this is an equilateral triangle, but it says nothing about an equilateral triangle in the description, and we took the method of making it by the easiest way.

[78] Device (physical) of Figures 2 and 4 of drawings of the Knight patent was received in evidence as Plaintiff's Exhibit No. 23-A.

Q. I hand the witness the Carr patent No. 834,188, which is in evidence as Plaintiff's Exhibit No. 24, and the specimen hook which has been offered in evidence as Plaintiff's Exhibit No. 24-A, and ask the witness to compare the showing of the patent with the hook. A. This hook, again, is merely lengthened. In all other respects it conforms to the patent drawing.

Q. When you say it is lengthened, do you mean that the fingers themselves are lengthened? A. That is right.

Q. Is that the only difference which the witness notes between the shape of the hook and the disclosure of the patent? A. That is the only difference, the difference in proportion, due to the lengthening of this hook.

Now, this hook may be longer than that; this radius here may be smaller than that.

Again, I say those drawings have no dimensions to show exactly what those radii should be.

[79] Q. How did you know what the radii should be? How did you select those? A. I gave them to a mechanic and told him to make this three and three-eighths inches long, and to go ahead and make this hook about a quarter in diameter so that it could possibly hang over a drapery pole, as I assume that's what they wanted to do with that hook in those days. As I told you before, the only instructions were, make this three and three-eighths inches; here is the drawing—and in fact the drawing is on the table that I used, and the pencil mark instructions are still on the drawings.

Q. The spacing of the fingers of this specimen hook, Plaintiff's Exhibit No. 24-A, is closer than the spacing of the fingers of the hook shown in Figures 1 and 2 of the patent, Plaintiff's Exhibit No. 24, is it not? A. I won't say that they are closer. The proportion is different. If I were to cut these down to a half inch in length and turn the ends over and make this short here, it would be very much like this drawing here. The fact that you lay that on there—after all, even a blueprint is not scaled for dimensions due to changes for contraction and expansion. These I certainly shouldn't scale for dimensions.

Q. Is it your understanding that the figures of the [80] patent are shown at reduced scale? A. Yes.

Q. And if you wanted to make a device as shown in the patent, you would increase all the dimensions in the same proportion, would you not? A. Not necessarily.

Q. Will you please compare the spacing of the fingers

of that specimen hook with the spacing of the fingers in Figure 1, and state which is greater? A. Figure 1 is greater than the hook.

Q. But if you were to scale up then the scale of the drawings in making the hook you would normally make the spacing greater and not lesser, would you not? A. Not necessarily.

Q. Do you mean when you make something which is shown at a small scale in a patent drawing you normally make some of the dimensions smaller than they are shown in the drawing? A. Possibly.

Q. Under what circumstances would you do that? A. Under circumstances where the mechanical function of the item requires that parts fit in a certain way, whereas a drawing in a patent merely shows the conception of an idea of how the parts should function, and not what would make them operate well in actual use. I mean, I have had to do with a good many patent [81] drawings and I have myself, and never have I seen a patent drawing that was an exact drawing of the item that we eventually made.

Q. And in making this group of specimen hooks, as I understand it you varied from the dimensions of the patent drawings where you felt it desirable to do so for some reason? A. That is right, desirable to do so for the purpose of fitting it into a tape with pockets so as to be able to demonstrate these in a pocket such as is used on the pleater tape.

Q. And this hook, Plaintiff's Exhibit No. 24-A, does not have the same size and relative dimensions as the hook of the patent, Plaintiff's Exhibit No. 24, does it? A. No, it doesn't.

THE COURT: . . . Plaintiff's Exhibit No. 24-A is received.

[82] The device (physical) heretofore marked for identification was received in evidence as Plaintiff's Exhibit No. 24-A.

Q. I hand the witness a copy of the Perlmutter patent No. 2,512,376, which is in evidence as Plaintiff's Exhibit

No. 36, and the specimen hook which has been offered in evidence as Plaintiff's Exhibit No. 36-A, and ask the witness to compare the specimen hook with the disclosure of the patent, and point out to the Court the differences in shape and relative proportions. A. There are no differences in shape between Figure 4 and this specimen, other than such as might occur due to the inaccuracies of hand bending. For instance, one end is slightly longer than the other here, whereas this indicates that the ends are probably the same length. Other than that there are no differences whatever in those two that I can see.

Q. Will the witness please examine closely Figure 4 of the patent, which I assume, is the figure of the patent to which he has been referring? Is that correct? A. That is right.

Q. And please tell the Court what ratio exists between the spacing from the top of the hook, or the pleater, to the top of the fingers, and the spacing from the top or [83] supporting portion of the hook to the bottom of the pleater. A. This is in ratio of probably five to one, one-fifth of the pleater above the hook; four-fifths or five-sixths below the top of the hook or the bite of the hook.

Q. I now ask the witness to examine the hook, Plaintiff's Exhibit No. 36-A, and state what that ratio is in the pleater. A. Three to one.

Q. In other words, in terms of relative proportions, the hook, Plaintiff's Exhibit No. 36-A, does not conform to the disclosure of Figure 4 of Plaintiff's Exhibit No. 36? A. I don't know; there is a visual comparison there. There are no dimensions on this figure; they tell me that it is in a certain ratio. If you mean that this is slightly lower than this on the drawing, you are correct; it is slightly lower than this point, but I can assure you that is entirely a mechanic's conception of what this drawing disclosed, what this drawing disclosed, and his idea of where it should be. There were no dimensions set. He simply bent it up, and there it is.

THE COURT: . . . Plaintiff's [84] Exhibit No. 36-A is received.

Device (physical) of Figure 4 of drawings of Perlmutter patent was received in evidence as Plaintiff's Exhibit No. 36-A.

Q. I now hand the witness the Steiner patent, No. 2,012,734, which is in evidence as Plaintiff's Exhibit No. 31, and the specimen hook which has been offered in evidence as Plaintiff's Exhibit No. 31-A, and ask the witness to compare that hook with the disclosure of the patent. A. Well, as I understand, this calls for a pleater hook, a fixture for curtains as it is called, which consists of four prongs, two of which are relatively shorter than the others. I found nothing telling me exactly how much shorter those hooks should be, and again, we made the length of the long hook such as it would fit the tape, and shortened these hooks in such a manner that we felt that it was covered by the wording of the patent as a layman might read it.

Now, I am not a patent attorney.

Q. What wording of the patent do you refer to specifically? A. Well, if I can find it here:

> "The prongs 11 are disposed adjacent the ends of the body 10 and are comparatively long, while the other set of prongs 12 are disposed between and in [85] substantially spaced parallel relation to the companion set of prongs 11, and are somewhat shorter than the latter."

Q. The fingers of this hook, Plaintiff's Exhibit No. 31-A, are more closely spaced than the fingers of the hook shown in the patent, Plaintiff's Exhibit 31, are they not? A. Possibly.

Q. Are they or are they not? A. The fingers are not all equally spaced. Two outside fingers are spaced closer together than the two inside fingers.

Q. Are any of the fingers spaced at the base of the hook as far apart as the fingers at the base of the hook shown in the Steiner patent, Plaintiff's Exhibit No. 31? A. I don't know.

Q. Can you make a comparison, please, sir? A. Again, there are no dimensions for me to compare it with. The objects of the invention are what we are interested in, and in fact we would not follow the exact shape of the bottom with the radii on the outside because that seemed to be immaterial to a hook of this kind. The proportion here and the proportion there are merely those of a photostatic reproduction, or a printed reproduction, and I don't personally believe they apply to [86] this.

Q. And you took the disclosure of this Steiner patent and changed it to suit it to the environment of the plaintiff's case and the defendant's tape, is that correct? A. Yes.

Q. Do the fingers of this specimen hook, Plaintiff's Exhibit No. 31-A, flare outwardly or are they parallel? A. Flare outwardly and intentionally and here they are parallel, sir.

Q. You have bent the hook parallel? A. I have bent the hook parallel.

THE COURT: . . . Plaintiff's Exhibit No. 31-A is received.

Device (physical) of Steiner patent was received in evidence as Plaintiff's Exhibit No. 31-A.

Q. I hand the witness a copy of the French patent No. 2,252,070, which is in evidence as Plaintiff's Exhibit No. 34, and a copy of the specimen hook which has been offered in evidence as Plaintiff's Exhibit No. 34-A, and [87] ask the witness whether or not in the hook, Plaintiff's Exhibit No. 34-A the hook portion, that is the portion which extends outwardly from the remainder of the hook, and is generally curved, extends downwardly below the lower end of the remainder of the pleater. A. It does not.

Q. I ask the witness which of the various drawings of the patent, Plaintiff's Exhibit No. 34, this specimen hook, Plaintiff's Exhibit No. 34-A is designed to represent. A. It is designed to represent the functions of the hook in Figure 42. The functional part of this hook is copied as best could be visually from the drawing shown there.

Q. Will the witness please examine Figure 42 of the patent, Plaintiff's Exhibit No. 34, and state whether or not the end of the hook portion extends substantially below the remainder of the pleater? A. Yes, sir, it does.

Q. Does the witness understand the relationship, if any, between Figure 38 and Figure 42 of this patent, Plaintiff's Exhibit No. 34? A. Figure 38 refers to Figure 37 rather than to Figure 42. It is a projection of this hook here, not the one that we are discussing.

Q. So there is no relationship between Figure 38 and [88] Figure 42? A. No.

Q. Does the witness understand the purpose of the two side fingers in this hook, Plaintiff's Exhibit No. 34-A, which is said to correspond with Figure 42? I refer to the side fingers which have eyes at their upper end. A. Yes, those are to be sewn to the drape so that the hook will not fall off.

Q. In other words, this is what is known in the trade as a sew-on hook? A. No, it is not. This hook pinches the tape between the two prongs. This, as I understand it, merely gives additional formation to the drape and keeps the hook from falling out of the drape.

Q. But it is adapted to be sewn on the drapery, is that correct? A. I suppose so.

THE COURT: . . . Plaintiff's Exhibit No. 34-A is received.

Device (physical) of French patent, No. 2,252,070, was received in evidence as Plaintiff's Exhibit No. 34-A.

[89] Q. I now hand the witness the specimen hook which has been offered in evidence as Plaintiff's Exhibit No. 34-B, and ask him what that specimen hook is intended to be representative of. A. That hook represents what type of mechanism we have when we extend the two side prongs to the same length as the center prongs. It is not covered by drawings here. It is simply an extension of the prongs, taking the mechanical liberty that we quite frequently do.

Q. Whose idea was it to make a hook of this type with elongated side arms? A. Mr. Kalish.

Q. That is, you merely followed his instructions? A. I did.

Q. And not the disclosure of the patent? A. I said there was nothing in the disclosure to cover that.

MR. KALISH: I think I stated that that was intended to show Figure 42 of this same French patent, with the two outer arms extended to the same height. I stated it when I offered it. There was no question about that.

MR. CONNER: This Plaintiff's Exhibit No. 34-B is objected to on the ground that it is not, and is not even intended to be representative of anything shown in the prior [90] art patents and has no relevance to the issues in this case.

THE COURT: How is it relevant?

MR. KALISH: It is relevant because it is simply Figure 42 of the Roger French patent with the two arms extended merely to fit the width of the existing tape, the tape in the patent drawing being a very narrow tape and we use a very wide tape. That's all it is. The construction is otherwise identical and it is for the purpose of showing to the Court what happens when you lengthen an arm, that's all. There is no intent to represent anything but Figure 42 with the arms lengthened.

THE COURT: The objection is sustained. What is that number?

MR. CONNER: Plaintiff's Exhibit No. 34-B, Your Honor.

THE COURT: Yes. Plaintiff's Exhibit No. 34-B, the objection to that is sustained.

Q. I ask the witness to refer to the Jantzen patent,

No. 1,087,771, which is in evidence as Plaintiff's Exhibit No. 26, and to examine this specimen device which has been offered in evidence as Plaintiff's Exhibit No. 26-A, and state which of the figures of the patent, if any, that device is intended to be representative of. A. Figures 2 and 3.

[91] Q. The device shown in Figure 2 has four arms, does it not? A. Yes.

Q. Two of which project downwardly and generally in an arcuate fashion, and the other two of which project upwardly to form a V, is that correct?

The two lower arms of this device, Plaintiff's Exhibit No. 26-A, are much more closely spaced than the corresponding arms of the device shown in Figure 2, are they not, and look very much like a pair of parentheses, do they not? A. Proportionately they are closely spaced, yes.

Q. Whereas the two lower arms of the device in Figure 2 are fanned out at a much greater angle and more nearly approach different segments of a circular arc, is that correct? A. Yes.

Q. The two upper arms of this device, Plaintiff's Exhibit No. 26-A, are not fanned out at nearly as great an angle as the two upper arms of the device shown in Figure 2, are they? A. No.

[92] THE COURT: . . . Plaintiff's Exhibit No. 26-A is received.

Device (physical) of Jantzen patent was received in evidence as Plaintiff's Exhibit No. 26-A.

* * * * * * *

Q. Mr. Polkosnik, as I understand your testimony yesterday it was that in making a number of these specimen pleater-hooks which have been offered in evidence as Plaintiff's Exhibits 22-A to 37-A, you intentionally deviated in certain dimensions and proportions from the disclosures of the prior art patents, and I understand that you did this on express instructions from the plaintiff's attorney, is that correct? A. You asked me why I made the prongs a certain length, and I told you that was because

Mr. Kalish instructed us to make them that length so that they would fit the tape.

* * * * * * *

[96] Q. Do you recall exactly what his instructions were? A. To make the portions of the hook that could enter the tape approximately three and three-eighths of an inch long.

* * * * * * *

Q. Did you have available a specimen of that tape? A. Yes.

Q. Did you have available also a specimen of the plaintiff's pleater-hook? A. Yes.

* * * * * * *

Q. When were these specimen pleater-hooks made? A. Last Monday.

Q. At the time you made these specimen pleater-hooks, did you know of the pendency of this suit? A. Yes.

[97] And did you know that you were making these specimen hooks for the purpose of this suit? A. Yes.

Q. In your testimony yesterday, as I understand it, you stated that your company had been manufacturing pleater-hooks for the past three or four years, is that correct? A. That is correct.

Q. Has your company manufactured any pleater-hooks for the plaintiff? A. Yes.

Q. When did it commence manufacturing pleater-hooks for the plaintiff? A. Some three-odd years ago; three and a half years ago, I think.

Q. To refresh your recollection, I call your attention to the fact that the complaint in this action alleges that the plaintiff commenced the manufacture of pleater-hooks in December of 1952. Is that when you commenced manufacturing pleater-hooks for the plaintiff? A. This particular type, yes.

Q. Had you manufactured any pleater-hooks for the plaintiff previous to that time? A. Yes.

Q. What type of hooks were they? A. They were an entirely different type of hook for [98] drawing together the tape, working from the side of the tape rather than across the tape.

* * * * * * *

Q. This previous type of hook that you speak of as being manufactured by you for the plaintiff previous to December, 1952, was of an entirely different type than Plaintiff's Exhibit 8, was it not?

* * * * * * *

[99] A. It was different.

Q. Has your company manufactured pleater-hooks for any company other than the plaintiff? A. No.

Q. Does your company manufacture all of the pleater-hooks sold by plaintiff, so far as you know? A. So far as I know, yes.

Q. How many pleater-hooks has your company manufactured for the plaintiff since December, 1952?

* * * * * *

[101] THE WITNESS: I can't tell you how many we have manufactured. We have manufactured a large quantity of them.

Q. More than a milion? A. Yes, more than a million.

Q. More than ten million? A. More than ten million.

Q. As many as twenty-five million? A. No. That is I am remembering quantities. I haven't the figures in front of me to justify me being absolutely sure of the quantities. Now, just what they are, I believe it is more than ten million and I believe it is less than twenty-five million. It is in that general category—whether it's nine, I can say.

Q. When your company commenced manufacturing pleater-hooks for the plaintiff, did you have available for your inspection a sample of the pleater-hooks which were made by someone else prior to that time? A. For my inspection a hand-made sample of a pleater-[102]hook was furnished me by my customer.

Q. Is that the only pleater-hook you saw prior to the time you commenced manufacturing? A. Prior to the time I commenced manufacture, yes.

Q. And you never saw a pleater-hook prior to that time? A. Yes. I have probably seen pleater-hooks; I couldn't say I haven't seen any pleater-hooks. I have seen wire of all different types and for all purposes, whether it is for pleater-hooks or not; I might have run across a pleater-hook and not known what it was, years ago.

Q. But you have no specific recollection of having seen any particular pleater-hooks prior to that time? A. No. I will modify that—of this type.

As I said before, we had manufactured pleater-hooks for the plaintiff prior to that time, of an entirely different character.

[103] The device heretofore marked for identification was received in evidence as Plaintiff's Exhibit No. 22-A.

The devices heretofore marked for identification were received in evidence as Plaintiff's Exhibits 25-A and 25-B.

The device heretofore marked for identification was received in evidence as Plaintiff's Exhibit No. 29-A.

[104] The device heretofore marked for identification was received in evidence as Plaintiff's Exhibit No. 32-A.

The device heretofore marked for identification was received in evidence as Plaintiff's Exhibit No. 37-A.

The device heretofore marked for identification was received in evidence as Plaintiff's Exhibit No. 38-A.

The devices heretofore marked for identification were received in evidence as Plaintiff's Exhibit Nos. 30-A and 30-B.

[105] REDIRECT EXAMINATION BY MR. KALISH:

Q. This other pleater-hook, which you manufactured for plaintiff, that was made of wire also? A. It was.

Q. And was it a device which was to pleat the draperies with or without being sewn to the draperies? A. Without being sewn to the draperies.

Q. Just being slipped into a tape? A. Yes.

MR. KALISH: I would like to ask Your Honor's reconsideration of the earlier ruling as to this witness' qualifications to testify as to what would have been obvious or unobvious to persons skilled in the art, in view of the examination of this witness by Mr. Conner in connection with the Roger French patent, in which I think Mr. Conner well qualified the witness by asking him to interpret the use and purpose of the

Figure 42 device of this Roger French patent; and also on the examination by Mr. Conner of this witness concerning the extent of his activities in the matter of pleater-hooks.

And I submit that on Mr. Conner's examination this witness is now eminently qualified to testify as to whether the differences between one structure and another would have been obvious to persons skilled in the art, in the drapery [106] art, in the wire-forming art, in December of 1949.

THE COURT: I am not aware that the witness has even testified that he was aware of what was common practice in the art—

MR. KALISH: Well, let me ask the witness one other question, perhaps.

THE COURT: —and how far back his knowledge of that would go.

He has only testified to his own experience. That isn't the art that they are talking about, is it? — one man's information.

MR. KALISH: Well, I think it is, but it is for Your Honor to say.

I submit that a man with his background can testify as to whether it would or would not have been obvious to a person skilled in the art to have made one change or another.

THE COURT: You may question him if you care to. I am not prepared to reverse my ruling without some qualification of the witness.

By MR. KALISH:

Q. Mr. Polkosnik, have you made a study of the prior patents which have been here introduced in evidence as Plaintiff's Exhibits 22 to 38, inclusive? A. Yes.

[107] Q. Have you read them thoroughly? A. Yes.

Q. Do you understand them? A. Yes.

Q. Do you understand the devices disclosed therein, and their use, as indicated in these patents? A. Yes.

Q. I ask you to turn to Plaintiff's Exhibit No. 23, which is the British patent to Knight, of 1904, and ask you to state what the significance is of having the hook part of the device, namely, the part that is to be put over a curtain rod, or a traverse rod, what the significance of the positioning of that hook is in relation to the pocket-entering finger, namely, whether it is high or low. What does that mean in practical use? A. Well, to me it means that the portiere, or drape, is hung on a rod below the rod and the hook is made high enough so that the rod will clear the top of the drape.

Q. Do you in your manufacture of pleater-hooks for plaintiff place the hooks at different heights in relation to the pocket-entering fingers? A. We do.

Q. And the examples that have been produced here as Plaintiff's Exhibits 8 and 9 show the hook, that is the bite of the hook, approximately midway of the length of the finger. [108] Now, in what other place do you place these hooks in your manufacture? A. Near the end of the finger and also midway between the end of the finger and the center of the finger. In other words, we have three positions

Q. And why do you make those three different kinds of hooks, namely, with the bite of the finger about the center of the hook, at the top of the hook, and the point midway between those two positions? A. The position of the bite depends on the way the drape is to be used. If the traverse rod is attached to the ceiling, or near the ceiling, the hook has to be near the end of the finger so that the top of the drape will clear the ceiling. If the rod is on the window, and there is sufficient room above the rod and it is desirable to cover part of the woodwork with the drape, the hook is lower down. If there is another condition where it is midway between those two, we give them another option of a third position on the hook.

Q. In other words, it is merely a matter of the style

drape? A. Merely a matter of the style and what the person wishes to accomplish with a drape.

Q. In order words, the nature of the installation? [109] A. That is right.

Q. Would it or would it not be obvious for a person skilled in the art to lower the bite of the hook of Knight's pleater to a position below the top of the finger? A. Yes.

MR. CONNER: I object to that question, Your Honor, as calling for an opinion on the part of the witness, for which he has not been qualified.

THE COURT: I don't think he has qualified himself to express that opinion.

By MR. KALISH:

Q. May I ask you this: Would the placing of the bite of the hook, in the Knight device, in the Knight pleater, to a point below the top of the finger, produce an unexpected result? A. No.

MR. CONNER: I object to that question, Your Honor, on the ground that this calls for an opinion as to whether a result would be expected or unexpected, and this witness has not been qualified.

MR. KALISH: I think he is certainly qualified to tell whether the result would be unexpected.

THE COURT: Sustained.

MR. CONNER: I believe the answer got in the record, Your Honor. The answer will be stricken along with [110] the question?

THE COURT: Well, it may go out.

MR. KALISH: I would then have to withhold my further examination of this witness, in view of Your Honor's ruling, because if it is Your Honor's view that he is not qualified to express any opinion on the matter of obviousness—

THE COURT: He has qualified himself only by showing that he manufactured for one customer certain hooks, or pleaters. He hasn't shown at all whether he has the general knowledge of the art.

MR. KALISH: That will be all.

MR. CONNER: I have one additional question.

RECROSS-EXAMINATION BY MR. CONNER:

Q. Mr. Polkosnik, I want to clear up one thing. As I understand your testimony, it is that you first commenced manufacturing pleater-hooks about three or four years ago, and that you manufactured a different type of pleater-hook than the one here involved prior to December, 1952. As I understand it then, this different type of pleater-hook, about which you have spoken, was not manufactured by you at any time prior to three or four years ago; is that correct? A. 1950 or 1951 would be the date when the hooks were manufactured; probably 1950.

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[111] STANLEY R. GREEN was called as a witness by the plaintiff.

DIRECT EXAMINATION BY MR. KALISH:

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Q. And what is your present occupation? A. I have a drapery fabric store on Rockville Pike, between Bethesda and Rockville.

Q. Is that a retail store? A. Yes.

Q. And in that store do you handle what is commonly called drapery hardware? A. Yes, we do.

Q. A complete line? A. Everything that the customer would need to make [112] draperies.

Q. How long have you had this store? A. Just short of two years.

Q. Have you had any experience in the drapery field prior to having this present store? A. Yes.

Q. Will you go back to the beginning of your drapery experience? A. In 1937 I was an assistant buyer at R. H.

Macy Company in New York, in their drapery fabric department.

Q. By the way, did they handle a line of drapery hardware as well? A. Yes, they do, very extensive.

Q. When you speak of the drapery fabric department does that always mean that they handle the hardware as well? A. That is right. In 1942 I went to Philadelphia as buyer of drapery fabrics and drapery hardware at Lit Brothers.

Q. Where? A. In Philadelphia. In 1948 I came to Washington to buy the drapery fabrics and hardware at the Hecht Company. I was there five years prior to opening my own business.

Q. What is your educational background? A. I went to the University of Pennsylvania, and after finishing at the University of Pennsylvania in 1929, for a [113] year I went to the Philadelphia Textile School.

Q. And what course did you take at the University of Pennsylvania? A. I was in the Wharton School of Finance and took their industry course. My major was industry.

Q. From 1937 on to the present time have you been continuously engaged in the drapery and drapery hardware business? A. Yes, I have.

Q. And in connection with these various positions you have held, has it been your duty to install and supervise the installation of draperies? A. Yes. My department in New York, Philadelphia, and Washington, as well as my store today, always made draperies for customers and installed draperies as part of the selling service. We had people whose job it was to do this work, and it was my job to supervise these people.

Q. And did you personally also install draperies with your own hands? A. I have been doing that for going on the last two years in my own store, because we haven't reached the size where we can have a staff to do it.

Q. And while you were with Lit Brothers, or Macy's, for instance, have you also at any time personally installed draperies? [114] A. I supervised them. Where there were

complaints I went out to see what the customer complaint was. My job was not to do installation work.

Q. Did you teach others the installation of draperies? A. Yes. I taught not only the installation people how to install, but it was my job to teach sales people how in turn to instruct customers on the making of draperies. Customers ask questions as to how to make draperies and it was my job to instruct the sales people how to instruct them.

Q. Have you personally supervised and taught others how to install four-finger metal wire pleaters in pleater tape? A. Well, I have taught both sales people and customers how to use the four-finger hook. . . .

. . . . . .

[119] Q. What are the different kinds of pleats that have been used from time to time in draperies? A. There are pinch-pleats; box-pleats; barrel-pleats; cartridge-pleats. All these are different methods of gathering fabric together to lend fullness when they are hung at a window.

Q. When you say "to lend fullness" what do you mean by that? A. Well, when a fabric is made into a drapery and hung on a rod, either on a stationary or on a movable traverse rod, it is desirable that they fall in uniform folds. In order to be able to accomplish that they are [120] pleated by one method or another at regular intervals so that the folds are uniform.

Q. And so that they stay? A. And they stay in that uniform fold.

Q. Are you familiar with the plaintiff's drapery pleater device? A. Yes, I am.

Q. Do you have them on sale? A. Yes, I do.

Q. Are you also familiar with drapery pleater devices of other manufacturers? A. Yes, I am.

Q. Do you keep them on sale? A. Yes, I do.

Q. Are these drapery pleaters—and I am now limiting myself to the kind that has the four metal fingers sticking up and a hook in back to hang it on the rod, and the pocketed tape that goes with it—are these metallic pleaters and tape intended for use with curtains? A. No, they are used on draperies.

Q. But not on curtains? A. Not on curtains.

Q. What is it that determines from time to time the sale of these items of drapery hardware like pleaters, the four-finger pleaters? [121] A. I don't know that I understand you.

Q. In other words, you spoke of box-pleats and barrel-pleats, and you named another one; what determines whether one kind of pleat or another is used? A. Style completely. It is a question of what the particular fashion is. It varies from time to time. It seems to work in cycles. And at the present time the more popular style is a pinch-pleated drapery. A few years ago there was a vogue of using what is known as a barrel or cartridge-pleat.

Q. And what is the fact as to the use of these four-finger metal pleaters now? Are those pleaters, with the tape that goes with it, used by professional interior decorators? A. No. These are used by the housewife who makes her own draperies. A professional drapery shop would not use a four-pronged hook. They would use a simple sew-on type hook and would pleat the drapery by hand, with a buckram stiffening at the head of the drapery.

Q. And gathering it by hand? A. That is correct.

Q. And sewing it in place? A. Correct.

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[122] Defendant's four-finger (nickel plated) pleater, supplied by defendant's counsel, like the pleater shown in Figure 2 of the patent-in-suit, was marked as Plaintiff's Exhibit No. 41 for identification.

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[124] A piece of defendant's tape, supplied by defendant's counsel, was marked for identification as Plaintiff's Exhibit No. 42.

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Q. Well, now, Mr. Green, have you ever seen a pleater like that of Plaintiff's Exhibit No. 41 for identification on sale anywhere in the United States? A. No.

Q. Has a pleater like that ever been offered to you as a department store buyer, either at Lits or at Macy's or at Hecht's? A. No.

[125] Q. And in your experience have you visited

other stores, competitive stores, as a buyer, to see what they were selling? A. Well, as a buyer at the Hecht Company we were part of a syndicate of buying offices and we exchanged ideas and discussed items as they came up. This hook I have never heard of, and yet there are four-prong hooks that have been the subject of many discussions in the drapery field.

Q. Now, then, can you tell us from your experience with drapery pleaters and tape whether a pleater like that of Plaintiff's Exhibit No. 41 for identification would be a practical pleater in the use and installation on drapery?

MR. CONNER: I object to that question, Your Honor; again he is asking this witness for a very controversial matter of opinion, and I don't believe the question is at all clear.

* * * * * * *

[126] THE COURT: I sustain the objection.

[127] Q. I show you a copy of Carr United States Patent No. 834,188, which is Plaintiff's Exhibit No. 24, and ask you if you have seen that patent before. A. Yes.

Q. Have you examined it? A. Yes.

Q. Do you know what is shown in that patent? Do you understand what is in that patent? A. Yes.

* * * * * * *

Q. Will you state whether it would have been obvious or unobvious to a person skilled in the art, in November of 1949, to have added two more fingers to the Carr device by bringing the wire down and up again?

MR. CONNER: I object to that question, Your Honor.

THE COURT: It is a leading question.

By MR. KALISH:

Q. I ask this: Will you state what skill would have been required in November, 1949, to make a four-finger device out of Carr's two-finger device?

[128] MR. CONNER: I object to that question, Your Honor. It has not been shown that this witness has

ever made a hook in his life, or ever designed a hook.

THE COURT: Sustained.

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MR. CONNER: May it please the Court, I think the difficulty is that Mr. Kalish is trying to get a witness to give an opinion on a question which is really up to the Court itself to decide.

MR. KALISH: Well, that's another matter. That I won't argue. If it is something for the Court to decide I certainly won't press this witness.

By MR. KALISH:

Q. I show you a package of metallic devices marked "Empire" slip-on heading hooks, and ask you if you are familiar with this package?

[129] A. Yes, I am. I sell this merchandise in my store.

* * * * * * *

Q. And will you state whether the heading hooks in this device are usable to produce a pleat in drapery by putting the two fingers of these hooks through two adjacent or removed pockets in a header tape? A. Yes. A box-pleat could be made by using this hook in a pocketed tape.

Q. I call your attention to U. S. Patent No. 2,553,272, issued to Perlmutter on May 15, 1951, which is in evidence here as Plaintiff's Exhibit 38, and ask if that patent number is imprinted on the package that you have before you?

* * * * * * *

[130] A. Yes, that particular patent number appears on this package.

* * * * * * *

[131] A package of 14 "Empire" slip-on heading hooks in sealed transparent bag of the Kirsch Company was marked for identification and received in evidence as Plaintiff's Exhibit No. 43.

Q. Since when has there been any significant style trend towards pinch-pleat drapery? A. Well, the use of draperies in the home has grown tremendously, particularly in the last five or six years. A survey made in 1937

by the New York Herald-Tribune showed that only 11 per cent of the windows in 1937 had anything hanging on them other than a window shade.

Q. You mean either drape or curtain? A. Either drape or curtain. That was in 1937. As a result of more money, more leisure time, a much widerspread knowledge on the part of the public on home furnishings, home decorating, the whole field of draping has grown tremendously in the last several years, [132] in the last five or six years. Prior to 1940 if a customer could afford draperies they had them custommade in a shop. Today approximately half of the fabrics which we sell in our store is made by the consumer herself into draperies; the other half goes through a so-called professional shop.

Q. Is this growth of decorating with draperies paralleled by growth in other decorative aspects of the home, or does it stand by itself? A. Oh, no; I am certain that all aspects of decorating have increased. The housewife today is far more color-conscious, design-conscious; she is familiar with style periods where she was not at all familiar and not nearly as familiar 20 or 30 years ago.

Q. And is there any particular set of publications which have to a certain extent promoted this home-decorating growth?

* * * * * * *

[133] A. There is a far greater interest on the part of the housewife in such magazines as House Beautiful, House & Garden, Better Homes & Gardens, and all these shelter publications.

Q. What did you call that? A. Shelter; they are known as shelter publications, and they have in our opinion and in my opinion gone a long way toward making the customer conscious of style trends. We go so far in our store as to display and have available for the customer five of these magazines, the current, and the two previous issues, and our customers go to them and refer to them to get ideas in home decorations.

Q. Has there been any significant change in home construction which has affected the use of drapery? A. Yes.

As a result of the ranch type, or bungalow type of home which gained popularity first on the West Coast several years ago, and in the last three or four years has gained tremendous popularity in this area, there has been a tremendous increase in the use of wide picture windows. These picture windows require draping in order that the home have some privacy. The normal way of draping these windows is to put a traverse rod across the top of them so that the drape can be closed or opened.

[134] There has been a growth of a semi-sheer fabric so that the drape could be kept closed and light come through and yet privacy obtained. This all ties in with the "Do-it-yourself" trend which has certainly been very strong in the last few years. The housewife is again going back to sewing, as I am told she did some 50 years ago, and she is making a lot of her own things, including draperies.

Q. Is this "Do-it-yourself" trend one limited to draperies? A. Definitely not.

Q. Or does it apply to other home products? A. Oh, yes, indeed.

THE COURT: You can get the answer to that by listening to TV.

CROSS-EXAMINATION BY MR. MORRIS:

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[135] Q. Do you do some drapery hanging yourself? I think you said you did. A. That is correct.

Q. How much of it have you done? A good bit? A. In three or four hundred homes in the last year and a half or two years.

Q. And one of the problems you have in hanging draperies that have a nice appearance is to have the heading proper, isn't it? A. That is correct.

Q. As I remember, in my home we used to have a lot of trouble with the headings that drooped over, and you would have one pleat standing up and then there would be a droop and then another one, and then a droop, so that sometimes even the lining showed. You remember that, don't you? A. From my experience if it drooped it usually

dr ped [136] all the way across, not one droop and then another droop.

Q. Well, that's different from mine; your experience was professional. A. Yes.

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Q. You have sold the plaintiff's pleaters, such as [137] shown in Plaintiff's Exhibit 8, have you? A. Yes.

Q. You had better look at it first. A. I recognize it. Yes, I have sold this.

Q. And you have sold the tape with which it is used, such tape being now as shown as part of Plaintiff's Exhibit No. 1? A. Yes, I have sold this tape.

Q. These two articles, Plaintiff's Exhibit No. 8 and Plaintiff's Exhibit No. 1 go together, don't they, to be used together? A. Yes.

Q. And that is the way you sold them, is that right? A. Yes.

Q. And one finger is to be slipped into one of the pockets on the tape—one of the fingers of the pleater is to go into a pocket of the tape? A. Each finger goes into a pocket.

Q. Yes, so that the result is that when you have four fingers you have four pockets and the fingers go into the pockets and form the pinch-pleat? A. That is correct.

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[143] REDIRECT EXAMINATION BY MR. KALISH:

Q. Mr. Green, as a buyer in Macy's and Lit Brothers and Hecht's department stores from 1937 on, had you had any duties which would have invoked your judgment as to the practicality and salability of various products in the drapery field?

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[144] A. One of the most important jobs, or functions, of a buyer in a department store is to interview salesmen, manufacturers, and to examine merchandise being offered to the buyer, to determine whether or not in the buyer's opinion there is a market for the item; whether the item would perform the function that the manufacturer claimed, and from my experience as a buyer we turned

down far more items than we bought. The reason why we had to turn down more than we bought is that we had neither the space nor the money and we had to be critical in order that we stock those items which the public wanted, rather than items which would merely set on the shelves and not find a market.

Q. And in passing judgment on these various products, did you make your selection according to what was the most [145] practical from a user's viewpoint? A. My training is such that I had to interpret the item being offered in terms of consumer use, and if I was a good buyer I certainly had to know what the consumer could use and what had a market, and what could not be used and what had no market, and where I may have made some mistakes I must have been right most of the time or I would have been out of business, as it were.

Q. And in connection with this judgment, is the practicality of the device an element in your consideration? A. Definitely.

Q. And do you have to know how the thing works? A. Absolutely.

Q. I now call your attention again to the four-prong pleater, which is marked for identification as Plaintiff's Exhibit No. 41, and ask you whether if that pleater were submitted to you for merchandising, or for offering to the public, your public, whether you would buy that pleater.

* * * * * * *

[146] A. From my experience in draperies, because so many of our customers and so many of the customers here in this area use several widths of fabric on wide windows, and use a traverse rod, it is desirable for this customer to be able to open the draperies, and have the fabric hanging on the side, as well as closing the drape and covering the entire space with drapery. From my knowledge of hooks that will allow the customer to make a drapery that will pleat, I would never use this hook because of the width of the nook. I have seen hooks which will make pleats which are much narrower, and when the drapery is opened the hook takes approximately half the

space that this takes. And if a customer had three widths of drapery, and had to use 15 of these hooks, she could not clear her window of fabric; it would be too wide when the drapery was open. And if I had a choice of buying a hook which occupied this kind of space, and a hook which took considerably less space, if they both performed the same function, I would never use this hook. There is one other factor about this ~~hook.~~ In drawing a drapery, closed or open, there is a certain amount of tension, and in this hook there is a definite tendency toward its spreading. And I have seen hooks that do not spread, and therefore I would not use one that did spread. [147] Again, there would be consumer dissatisfaction, and I can't build a business that way.

Defendant's four-finger (nickel-plated) pleater, supplied by defendant's counsel was marked and received in evidence as Plaintiff's Exhibit No. 41.

A piece of defendant's tape, supplied by defendant's counsel was marked and received in evidence as Plaintiff's Exhibit No. 42.

RECROSS-EXAMINATION BY MR. MORRIS:

Q. Mr. Green, look at this Plaintiff's Exhibit No. 42, [148] which has in it one of the pleating hooks similar to Plaintiff's Exhibit No. 41. That hook that is in Exhibit 42 holds the piece of fabric, Plaintiff's Exhibit 42 into a pinch-pleat, doesn't it? A. Yes.

Q. And when that piece of fabric is attached to a drape, a piece of drape material, it will hold that in a pinch-pleat, won't it? A. Yes.

Q. That is the same that plaintiff's device does when it is inserted in the pockets of the plaintiff's tape, isn't it? A. It is not the same because it is a wider pleat; it is a wider hook.

Q. It holds it into a pinch-pleat? A. Correct, yes.

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Drapery (physical) with plaintiff's "Conso" "Best-pleat" tape and "Nip-Tite" pleater was marked for identification as Defendant's Exhibit No. 1.

[149] Q. Do you recognize those hooks on Defendant's Exhibit 1 as the plaintiff's hooks? A. Yes.

Q. When you pull the curtain, or the drape, of Defendant's Exhibit 1, to an open or a closed position, the pull is exerted on the hook, isn't it? A. That is correct.

Q. On this thing that hooks over the rod or over the little rings? A. Yes.

Q. So that the strain is on that. Now, your objection to this Exhibit 41 and Exhibit 42, which is the defendant's, is that the pleats spread apart as you pull them; is that it? Did you object to them for that reason? [150] A. That's right, yes.

Q. But they go right back together again, don't they? A. Well, I haven't pulled them very far.

Q. Well, give them a normal pull, you know, like they would be subjected to. A. You see that has not come back.

Q. But you pulled that in a fan form like that, didn't you? A. No; I pulled it sideways.

Q. You pull it straight, that way, now; you pull it right straight across. A. Your pull is going to be at the top of that—it's going to be here.

Q. Pull it straight. A. I can't; that's the only way you can pull it.

Q. That is your objection, that it flares out at the top? A. That's one objection, and also that it takes too much room.

Q. You mean they make too big a pleat? A. No. I mean that the drape can't be open and occupy a small space if you had 10 or 15 hooks and two or three widths of fabric, the window would be partially closed where it might be more open by using a narrower hook.

Q. How much space would you save by using the [151] plaintiff's hook? A. You would save about a half inch on each hook, and if you had 15 hooks it would be seven and a half inches, and seven and a half inches on each side of the window is a lot of light to cut out.

Q. And your objection is that, based upon the fact that you would want to free the entire window for the light to come in? A. Yes.

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Q. You think that it is better because if you have 15 of them they will fold up into a smaller space than defendant's; that's one reason, isn't it? A. Yes.

Q. On the plaintiff's hook, when you pull, don't the fingers separate the same as they do on the defendant's? A. No; they are much tighter; they are much stronger.

Q. Oh, it's a matter of strength of the wire? [152] A. I believe it is strength of the wire and the way it is made.

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Q. Look at this (Plaintiff's) Exhibit 9. This little pivoted U-shape member, is that the thing that keeps the fingers from spreading? A. Well, also the fact that it is a solid piece on the bottom; it is not merely a piece of bent wire.

Q. Am I to take it that this pivoted U-shape thing does assist in keeping the fingers from spreading? A. That's one of the things.

Q. And the other is that you have a direct tie-in from the outside finger down to the bite of the U? A. Yes.

Q. And also to the inside fingers? [153] A. Yes.

Q. So you have that additional strengthening member which insures the fingers staying together? A. Yes, sir.

Q. Have you ever tried out one of defendant's devices before you came into court here? A. No.

Q. So your entire experience with those devices of defendant has been since you became interested in this law suit as a witness? A. Correct.

REDIRECT EXAMINATION BY MR. KALISH:

Q. Looking at Plaintiff's Exhibit No. 8, which is one of the plaintiff's hooks without this swinging arm, and then looking at the pleater of Plaintiff's Exhibit No. 41, which is a specimen of the defendant's hook, can the fingers of plaintiff's hook be pulled apart in the fashion in which the fingers of defendant's hook can be pulled apart? A. No. These are solid. The bottom is a solid piece of metal, whereas this is merely a piece of bent wire.

Q. Would the pleaters of defendant, like that of [154]

Plaintiff's Exhibit 41, retain their shape in use as well as the plaintiff's pleater? A. Well, in my experience these things work fine until the housewife has a drapery catch and puts a little more pressure on them than she might normally, and then she has trouble, and it's no longer practicable.

RECROSS-EXAMINATION BY MR. MORRIS:

Q. In your last answer were you referring to defendant's article, in this last answer? A. I was asked as to whether or not this (defendant's hook) could pull apart in actual use.

Q. And you say the housewife has trouble with them? A. No. I said normally she may not have any trouble until a drapery catches, and then the minute she puts a little extra pressure on it they will spread as I spread it with my finger.

Q. And that you say without any actual experience with these hooks on draperies hanging on a window? A. Well, I have seen so many draperies, and I have [155] heard customers say it is caught and they don't know why and we have to tell them why it catches and what they do to release it.

Q. But you didn't answer the question. My question was whether your answer had the benefit of your having seen any of these devices of the defendant on draperies on windows. Your answer doesn't have the benefit of that knowledge, does it? A. That is correct.

Q. Let's go to this other one that was handed to you by Mr. Kalish, which is Plaintiff's Exhibit No. 8. That doesn't have the U-shape piece on it that Exhibit 9 has, does it—the pivoted U-shape? A. That's right.

Q. And when you pull on these fingers they can fan out just the same as can the ones of defendant, possibly not so easily, but they can be pulled out the way I am pulling it now, isn't that right? A. Yes, but there is much more resistance.

Q. It is a matter of the stiffness of this thing? A. Yes.

[157] Defendant's eight-page printed literature (on yellow paper) was marked for identification and received in evidence as Plaintiff's Exhibit No. 44.

Defendant's four-page printed literature (on blue paper) was marked for identification and received in evidence as Plaintiff's Exhibit No. 45.

HAVILAND H. PLATT was called as a witness by the plaintiff:

DIRECT EXAMINATION BY MR. KALISH:

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[158] Q. And your age? A. Sixty-five.

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Q. What is your occupation? A. Engineering consultant.

Q. And where is your place of business? A. 19 East 53rd Street, New York City.

Q. And what is your educational background? A. I was educated at the University of Pennsylvania and graduated in 1909 with the degree of Bachelor of Science in Electrical Engineering. Subsequently, from the University of Pennsylvania also I received a degree of Mechanical Engineering in 1930.

Q. And are you a member of any engineering or scientific societies? A. Yes, I am.

* * * * * * *

[159] Q. Let me ask you this: From the time you left college, have you devoted your entire time to engineering? A. Yes, I have.

Q. Have you had any experience, professional experience, in connection with patents? A. Yes, for many years.

Q. In what capacities? A. In various capacities. I have advised employers on patentability of devices that have been developed —

Q. You mean on the question of invention? A. On the question of invention and what was inventive about new devices. I have also had considerable experience in advising and discussing with counsel inventions of my own which were being processed in the Patent Office. I have also

been retained by patent attorneys on a number of occasions to advise them as to the patentable subject matter of devices submitted by clients of theirs.

Q. And in connection with this work have you had [160] occasion to appear before the patent examiners either of the United States Patent Office or the patent offices of foreign countries? A. Yes, I have.

Q. Which patent offices have you appeared before? A. Well, I have had conferences in the United States Patent Office, in the British Patent Office, and in the German Patent Office.

Q. You mean with the patent examiners? A. Yes.

Q. In connection with the question of what is invention? A. That's right, yes.

Q. And have you also testified before United States District Courts in patent cases on the question of what the invention was about, and the degree of skill, or other matters involved in patent cases? A. Yes, I have on a number of occasions.

* * * * * * *

[162] Q. Were they all patent cases? A. Yes.

Q. All patent cases, all of them where the issues were validity and infringement? A. Yes.

Q. And in these cases was the subject matter always the same or different industries? A. They were all different —no, several had to do with the lubricating industry, but all the rest were different.

Q. Different industries? A. Yes.

Q. And were any of them industries in which you had been personally engaged in the sense that you had been a manufacturer? A. No, not directly.

Q. Or a direct worker in that art? A. Not directly, no.

Q. In connection with your consulting work, have you [163] also been called upon by various concerns, or other institutions, to design and develop mechanical equipment? A. Oh, yes, that's one of my regular occupations.

* * * * * * *

[164] Q. Have you at my request examined the Lou-

don patent here in suit, and the prior patents which have been identified here as follows, namely; The Loudon patent being Plaintiff's Exhibit No. 6, and the prior art patents being Plaintiff's Exhibits 28 to 32, inclusive. A. Yes, I have.

Q. And from your examination of these have you become familiar with the state of the art antecedent the filing date of the Loudon patent-in-suit? A. Yes, I have.

Q. Now, will you state, from your reference to the prior art, whether the idea of a multifinger metallic pleater and a multipocketed pleater tape to be sewn to the top of draperies was new at the time of the filing date of the Loudon patent here in suit?

* * * * * * *

[165] A. It was not new.

Q. Will you point out where that idea is fully disclosed? A. Well, Knight shows a pocketed tape to be sewn to the top of the drapery.

Q. And does it also show a multifingered pleater hook? A. Yes. It shows a multifingered pleater hook. In this instance it has three fingers. The patent of Carr, which is Plaintiff's Exhibit No. 24, also shows a tape with pockets and a hook with multifingers, in this case two fingers.

Q. Now, will you go on to the next one?

* * * * * * *

[166] A. You inquired about the next one, Plaintiff's Exhibit No. 25, I believe. Plaintiff's Exhibit No. 25 does not show in the patent pleater tape. It does show a two-finger pleater hook adapted to entering tape, and while it has two fingers it is also mentioned in the specifications that it may have two or more points —

Q. Meaning fingers? A. Fingers. "Points" is the word used in the specification.

Q. What is the next one? A. The next one is Plaintiff's Exhibit No. 26 to [167] Jantzen. That discloses a hook with four prongs which were intended to be sewn to the drapery but obviously could be inserted in the pocketed tape.

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Plaintiff's Exhibit No. 29, patent to Charlton, shows a single finger which is shown in Figure 1 inserted in a

vertical closed-top pocket in a tape sewn to the heading of the drapery.

Q. But that last one is not a pleater as such with a single finger? A. No, it is not.

* * * * * * *

Q. Just go to the multiple-fingered ones. [168] A. We get to Plaintiff's Exhibit No. 31, the patent to Steiner, and that shows a four-finger pleater hook which is shown in Figure 1 for forming pinch-pleats in the heading of a drape.

Q. In Steiner is there a separate pocketed tape or are the pins simply pulled through the fabric of the drapery? A. They are pulled through the fabric of the drapery.

Q. Is the effect, the end result, any different from putting separate tape on?

MR. CONNER: I object, Your Honor, to that question.

THE COURT: Sustained.

By MR. KALISH:

Q. Will you go to Plaintiff's Exhibit No. 32? A. That is the patent to French, and that shows a number of different varieties of hook appliances, several of which show two fingers for insertion in a pocketed tape, which is shown in Figure 2.

Q. Go to the Roger French patent. A. That is Plaintiff's Exhibit No. 34, a patent to Roger French. That also shows a considerable variety of alternate hanging devices and of the tapes that they cooperate with.

The one shown in Figure 42 particularly has a multiple-finger arrangement which actually shows four fingers and a hook for hanging it on the curtain rod.

[169] Adjacent to it it shows a tape on a drapery with vertical pockets.

Q. Now, go to the Perlmutter patent No. 2,553,272, which is Plaintiff's Exhibit No. 38. A. The Perlmutter patent, Plaintiff's Exhibit No. 36, shows several arrange-

ments of two-fingered pleater hooks. Two or three are bent of wire; one is stamped from sheet metal.

It also shows in Figure 2 some of these devices in place.

Plaintiff's Exhibit No. 38, also to Perlmutter, shows one main form of device and another in Figure 5 as an alternate construction for a portion of it.

It shows a hook with two pleater fingers. In Figures 1 and 2 they are shown with slightly rounder upper points on straight terminal members, while in Figure 5 they show a U-shape turned over top for the finger.

In Figure 3 it shows the installation in curtain head- to form a box-pleat.

Figure 4 is a view the other way of a pleat formed

[170] Q. What does the patent recommend in respect to the alternative form of construction for the end of the finger shown in Figure 5? A. It states that if the curtain is to be supported on the ends of the fingers the form of Figure 5 is to be used so as to prevent penetration by the point of the finger.

Q. Into the fabric? A. Through the fabric.

[171] Q. Will you turn to Claim 1 of (defendant's) patent (Plaintiff's Exhibit 6) and state whether the pleater of Plaintiff's Exhibit 8 responds to claim 1?

MR. CONNER: I object to that question, Your Honor, as calling for an interpretation of the patent claims.

[172] THE COURT: Sustained.

By MR. KALISH:

Q. Will you look at the pleater of Plaintiff's Exhibit No. 8 and state whether that pleater contains or includes four inverted U-shaped pocket-engaging fingers? A. It does not.

Q. Will you state whether the pleater of Plaintiff's Exhibit No. 9 contains or embodies four inverted U-shaped pocket-engaging fingers? A. No, it does not.

Q. Will you state, first, in respect to Plaintiff's Exhibit No. 8 and then in respect to Plaintiff's Exhibit No. 9, whether either of those devices comprises a single length of wire-like material? A. No, neither of them does.

Q. Will you state whether either of those devices, Plaintiff's Exhibits 8 or 9, include a series of vertically disposed U-shaped fingers with the loops of the U-shaped portions disposed upwardly? A. Neither does.

Q. That is not present, you say? A. That is not present in either one.

Q. Will you state whether either of them contains non-perforating fingers? [173] A. Well, I find that when these fingers are pushed into the tunnels, or pockets, in the tape that is commonly used with them, that they very readily do perforate the tape.

Q. You mean like Plaintiff's Exhibit No.1? A. Yes, that's right.

MR. CONNER: I move to strike the answer, Your Honor. I don't think this witness has been qualified to speak of what type of tape is commonly used with that hook.

THE COURT: Sustained.

By MR. KALISH:

Q. Mr. Platt, would you take Plaintiff's Exhibit No. 1 and apply to it the fingers of Plaintiff's Exhibit No. 8, and see whether the fingers will perforate the sidewall on the finger-receiving pockets? A. They perforate the sidewall very readily.

Q. Will you state whether either of these pleaters of Plaintiff's Exhibits 8 and 9 comprise a single length of wire-like material looped and brought together in its middle portion and forming a suspending hook portion having the bill thereof extending outwardly and downwardly, said [174] single length of material being looped upwardly from the lower part of the hook and then being looped over and downwardly and looped outwardly and upwardly and

then looped upwardly and downwardly in the provision of two substantially U-shaped pocket-engaging fingers on each side of the hook with the arms of the U-shaped portions lying in a single plane substantially at right angles to the extent of the bill of the suspending hook portion? A. That language does not apply to either of these devices in any respect.

Q. Would you now state whether either of the plaintiff's pleaters of Plaintiff's Exhibit 8 or 9, comprise a single length of wire-like material doubled in its middle portion and brought together and formed to provide a suspending hook portion with the bill of the hook portion extending outwardly and rearwardly and downwardly, said length of material extending on opposite sides of the lower part of the suspending hook portion in spaced-apart upwardly extending lengths turned over and then returned downwardly providing four substantially U-shaped nonperforating pocket-engaging fingers with two each on opposite sides of the hook with the arms of the U-shaped fingers lying in a single plane substantially at right angles to the extent of the hook portion and with the loops of the U-shaped pocket-engaging fingers disposed upwardly? [175] A. That language does not apply remotely to either of these devices.

Q. Now, will you put each of these plaintiff's pleaters, of Plaintiff's Exhibits 8 and 9, into the pockets of plaintiff's tape, Plaintiff's Exhibit No. 1? A. I have done so.

* * * * * * *

[177] Q. Looking at the tape of Plaintiff's Exhibit No. 1, with the hooks of Plaintiff's Exhibits 8 and 9 applied to the pockets thereof, and also looking at Defendant's Exhibit No. 1 for identification, state whether you find in either one or the other of those tapes, with the hooks in it, a drapery curtain having a pleater pocket strip provided with a plurality of spaced-apart vertically-extending parallel pockets open at their lower ends and closed at their upper ends. A. No, the pockets are open at the upper end, as you can see.

* * * * * * *

[178] Q. Now, looking at Defendant's Exhibit No. 1 as it is now suspended on the traverse rod mounted on the easel, where I believe it has been mounted by the defendant's counsel for demonstration purposes, do you find now in Defendant's Exhibit No. 1 the structure elements to which I called attention in my last previous question? A. No, I do not, clearly not, because it says "The upper ends of the fingers in the pockets having closed upper [179] ends supporting the curtain against sagging upon the fingers of the supporting member."

There being no pocket having closed upper ends in Defendant's Exhibit No. 1, there can be no response to that particular language.

Q. Well, is it possible for that structure of Defendant's Exhibit No. 1, as it is, to give any support to any part of the curtain, or drapery, against sagging by the upper ends of the fingers?

MR. CONNER: Objection, Your Honor. This witness has not been qualified as a drapery expert.

The question is whether or not it would be possible for the upper ends of the fingers to give any support, and I don't believe he is qualified to answer that question.

THE COURT: Sustained.

Q. Now, will you return to the patent to Carr, which I think, is Plaintiff's Exhibit No. 24, and state whether in that Carr device you find a pleater made out of a single length of wire bent back upon itself? A. Yes.

Q. State also whether it contains any fingers whose upper ends are inverted U-shaped. [180] A. Yes, it does.

Q. State whether the upper ends of the fingers of the Carr device are non-perforating. A. Yes.

MR. CONNER: Objection, Your Honor. "Non-perforating" is a word which is extremely vague unless referred to a specific substance or material which is being perforated.

It may perforate, for example, a sheer gauze and not perforate a canvas or duck.

THE COURT: He may answer, but let him tell what he means.

A. Well, they are non-perforating with respect to the type of tape which is in commercial use.

MR. CONNER: Objection, Your Honor. I don't believe this witness is qualified to say what kind of tape is in commercial use.

THE COURT: Sustained.

By MR. KALISH:

Q. Is it non-perforating with respect to such tape as is exemplified by Plaintiff's Exhibit No. 1? A. It is.

MR. CONNER: Objection, Your Honor. I don't believe that the witness has ever stated that he has actually taken a hook of that type in this Carr patent and attempted to perforate that particular type of fabric.

[181] THE COURT: Sustained.

By MR. KALISH:

Q. I show you the device which is Plaintiff's Exhibit No. 24-A, in evidence, and which has been received in evidence as a physical embodiment of Figures 1 and 2 of the Carr patent, and ask you to apply the fingers to the tape of Plaintiff's Exhibit No. 1 in the same way that you did the other, and tell what happens.

* * * * * * *

Q. Just say if it is perforating or non-perforating. A. It is not possible, with the ordinary application of strength, to perforate the fabric.

Q. So are those fingers perforating or non-perforating? A. Non-perforating.

MR. CONNER: I move to strike that answer unless the witness limits the answer of "non-perforating" to this particular piece of fabric, Your Honor.

[182] MR. KALISH: I presume it was so intended.

THE COURT: Well, the answer will be so understood.

Q. Would you state whether in the Carr device, whether the Carr device is one comprising a single length of wire-like material looped and brought together in its middle portion? A. It is.

Q. And forming a suspending hook portion having the bill thereof extending outwardly and downwardly? A. Yes.

Q. Said single length of material being looped upwardly from the lower part of the hook? A. Yes.

Q. And then being looped over and downwardly? A. Yes.

Q. Does this looping in the Carr device produce any pocket-engaging fingers? A. It does.

Q. What would be required to produce two more fingers in the Carr device? [183] A. It would require a longer piece of wire which was carried up to the top and bent over and carried down and bent up again, and carried down and bent down again.

Q. In other words, it is an extra up and down bend? A. That's right.

Q. With added wire. A. Yes.

Q. Is there any difference in principle or mode of operation between the device shown in Figures 1 and 2 of the Carr patent and the device shown in Figure 2 of the Loudon patent, in so far as concerns the matter of pleating? [184] A. No, there is not.

Q. Will you turn to the Knight patent, which is Plaintiff's Exhibit No. 23, and also to the device which is Plaintiff's Exhibit No. 23-A, and state whether in the device shown in Figures 1, 2, 3 and 4 of Knight you find four pocket-engaging fingers of narrow width and having rounded upper ends? A. I find three pocket-engaging fingers.

Q. But otherwise you find the same fingers, except that there are only three? A. There are three instead of four. Otherwise they respond to that description.

Q. Will you state also whether in the Knight device the fingers are non-perforating in relation to Plaintiff's Exhibit No. 1? A. They are blunt on the top and would in that respect be similarly non-perforating.

[185] Q. Will you try the fingers of Knight and tell whether they are non-perforating? A. I am unable to push it through so I would say it was not perforating.

Q. Now, will you state whether from the standpoint of pulling a series of pockets, and the drapes to which they are sewn, into pleats, whether it makes any difference whether the pleater is made out of a length of wire or stamped out of sheet metal, or otherwise shaped by some other metal-working process?

MR. CONNER: Objection. I don't believe this witness has been qualified to testify about the effect on draperies in forming pleats.

MR. KALISH: If Your Honor please, the witness is well qualified to say whether the manner in which a thing is made, whether it is of wire or sheet metal, affects the end result.

THE COURT: Objection sustained.

By MR. KALISH:

Q. Will you now turn to Steiner, that is Plaintiff's Exhibit No. 31, and also turn to Plaintiff's Exhibit No. 31-A, and state whether in the Steiner device you find a metal pleater having four fingers? A. Yes.

[186] Q. And are those four fingers of wire? A. They are.

Q. And are the four fingers in a single plane? A. They are.

Q. And does that device also include a hook? A. It does.

Q. And does that hook extend outwardly and rearwardly substantially at a right angle to the plane in which the fingers lie? A. Yes.

Q. And will you state whether the bite of the hook is below the upper ends of the finger? A. It is.

Q. And is it substantially midway of the lengths? A. Yes, generally.

Q. Is it substantially midway of the over-all vertical dimensions of the pleater? A. Just about.

Q. Will you look at Figure 8 of the French patent, which is Plaintiff's Exhibit No. 32, and also look at Plaintiff's Exhibit No. 32-A, and state whether in Figure 8 there is shown a two-fingered device formed of a single length of wire? A. Yes, sir, there is.

Q. And are the upper ends of the fingers blunt and non- [187] perforating? A. Yes, they are.

Q. And is there a hook part connected with it? A. Yes, there is.

Q. And is the bite of the hook beneath the upper ends of the fingers? A. Yes.

Q. And is the hook at substantially a right angle? Does the hook extend substantially at a right angle to the plane in which the fingers are? A. Yes.

* * * * * * *

[188] Q. State whether that is a device embracing a single length of wire-like material looped and brought together in its middle portion. A. Yes.

Q. And forming a suspending hook portion having the bill thereof extending outwardly and downwardly? A. Yes.

Q. Said single length of material being looped upwardly from the lower portion of the hook and then being looped over? A. Yes.

Q. And is that what forms the fingers? A. It is.

Q. I ask you now to turn to Figure 42 of the Roger French patent, which is Plaintiff's Exhibit No. 34, and state whether that device comprises a single length of wire. A. Yes.

Q. Does it contain fingers? A. It does.

Q. How many? A. Four.

Q. And does it contain a hook? A. Yes.

Q. And does the hook extend rearwardly at substantially [189] a right angle to the general plane in which the fingers lie? A. It does.

Q. And state whether the two central fingers are inverted U-shapes. A. Yes.

Q. State whether the loops of these U-shaped fingers are disposed upwardly. A. Yes.

Q. How many fingers are there in this device? A. There are four fingers.

Q. And state whether each of those four fingers has a non-perforating upper end. A. Yes.

MR. CONNER: Objection, Your Honor. That is the same question that has been asked previously. The word "non-perforating" is meaningless unless it is applied to a specific fabric.

THE COURT: Sustained.

By MR. KALISH:

Q. I will ask that you apply the device, Plaintiff's Exhibit 34-A, to the pockets of Plaintiff's Exhibit No. 1 and test it and see if those fingers are non-perforating or whether they are perforating. A. They are non-perforating.

Q. Will you state whether this Roger French device is [190] one comprising a single length of wire-like material looped and brought together in its middle portion and forming a suspending hook portion having the bill thereof extending outwardly and downwardly, said single length of material being looped upwardly from the lower part of the hook and then being looped over and downwardly and looped outwardly and upwardly and then looped outwardly and downwardly in the provision of two substantially U-shaped pocket-engaging fingers on each side of the hook? A. Yes, generally.

Q. And are there two fingers on each side of the hook? A. Yes.

Q. Will you look at Figure 4 of the Perlmutter patent, which is Plaintiff's Exhibit No. 36, and look at Plaintiff's Exhibit No. 36-A at the same time, and state whether that device is made of a single length of wire? A. It is.

Q. And does it include two fingers? A. It does.

Q. And are those fingers inverted U-shapes? A. Yes.

Q. With the loops of the U extending upwardly? A. Yes.

Q. And does it have a hook? [191] A. It does.

Q. And is the hook below the upper ends of the fingers? A. Yes, it is.

Q. And would you state whether the upper ends of the fingers are non-perforating in relation to the tape of plaintiff's Exhibit No. 1? A. Yes, they are.

Q. Now, will you look at Plaintiff's Exhibit 38, which is the other Perlmutter patent, and Plaintiff's Exhibit No. 38-A, and state whether in this Perlmutter patent you find a device having two fingers and a hook? A. Yes.

Q. Pardon me, I should have asked you another question about the first Perlmutter patent. May I just go back?

In the first Perlmutter patent, Figure 4, does the hook extend rearwardly and generally at a right angle to the plane of the fingers? A. Yes.

Q. And again, staying with the first Perlmutter patent for a minute, does it also show another two-fingered hook in Figure 5? A. Yes, it does.

Q. Is that made of wire? A. No, that is of sheet metal.

[192] Q. Will you turn to the second Perlmutter patent? Do you in this Perlmutter device, shown in Plaintiff's Exhibits 38 and 38-A, find a hook extending outwardly and rearwardly of the fingers substantially at a right angle to the plane of the fingers? A. Yes.

Q. And is the hook below and substantially below the ends of the fingers? A. Yes, it is.

Q. Are the fingers perforating or non-perforating?

MR. CONNER: Objection unless he is going to relate that to the fabric.

MR. KALISH: It is so understood.

A. They are non-perforating.

MR. CONNER: That is with respect to the fabric of Plaintiff's Exhibit No. 1?

THE WITNESS: Yes.

By MR. KALISH:

Q. Have you examined the Perlmutter patent to learn what the purpose is of the big inverted U-shaped upper ends of the fingers in Figure 5 of Perlmutter? A. Yes, I have.

Q. And what is the purpose? A. To prevent the perforation of fabric if the curtain is to be supported by the top of the fingers.

[193] Q. From your review of the prior art, which you have reviewed here, would it have been obvious or unobvious to a person skilled in the art in November, 1949, to make a pleater like that shown in the Loudon patent here in suit?

* * * * * * *

A. It would have been obvious.

[194] CROSS-EXAMINATION BY MR. CONNER:

Q. Mr. Platt, I believe you testified that you have served as a witness in a number of previous patent suits. A. Yes, that's right.

Q. In any of those suits, was Mr. Kalish acting as the counsel? A. Yes.

Q. In how many previous suits have you served as a witness when Mr. Kalish was appearing as counsel? A. I would say four. I couldn't be positive without looking it up, that that was the exact number, but I think it is four.

Q. And this would be the fifth, according to your recollection? A. Yes.

Q. Are you being paid to testify in this case? A. Yes.

Q. Were you paid for the time you spent in preparing for this case? A. Yes.

MR. KALISH: Counsel, I suppose you mean expects to be paid?

MR. CONNER: Yes, I will modify the question. Do you expect to be paid?

[195] THE WITNESS: Well, Mr. Kalish's credit is very good.

By MR. CONNER:

Q. In other words, you would characterize yourself as a professional witness, would you not? A. Yes. That's one of my professional activities.

Q. And you will serve attorneys who call on you to act as a witness in patent cases. That's one of your ways of making a living? A. Yes; I have served a number of attorneys in that capacity.

Q. If you will look, please, sir, at Plaintiff's Exhibit No. 23, which is the Knight patent, will you please state whether or not in the hook shown in Figures 2 and 3 of that patent the supporting portion of the hook is above or below the upper ends of the fingers? A. It is above them.

Q. Substantially above? A. Yes.

Q. Figure 4 of that patent shows one of Knight's hooks engaged in a drapery, does it not?

Q. When the hook is engaged in the drapery, is the hook exposed above the upper edge of the drapery? A. As shown in Figure 4 it is.

Q. Does Knight state what the purpose of the supporting [196] hook G of his metallic member is intended for? A. I would have to refresh my recollection on that. (Reading): ". . . for engaging with and being held by the curtain pole ring (not shown)."

Q. When the hook G is engaged on a curtain ring, would the curtain ring and the curtain rod, or traverse rod, be visible above the upper ends of the drape? A. Unless there was something else to conceal it, it would be.

Q. I believe you testified a moment ago with respect to the metallic device shown in the Knight patent, Plain-

tiff's Exhibit No. 23, that there was no difference in the mode of operation as concerns the matter of pleating between the hook or device shown in the Knight patent and that shown in the patent-in-suit, is that correct? A. Yes, that's correct.

Q. Do you know the difference between a pinch-pleat and a box-pleat? A. Yes.

Q. What kind of pleat is shown in the Knight patent? A. A box-pleat is shown in Figure 4 of the Knight patent, so far as I can make out.

Q. What kind of pleat is shown in the patent-in-suit? A. A pinch-pleat is shown in the patent-in-suit.

Q. In the Knight patent the device disclosed there [197] has how many fingers? A. Three.

Q. Are they in the same plane? A. No. They are in a triangular arrangement.

Q. Will you please look at the Carr patent, Plaintiff's Exhibit No. 24, and state whether or not the metallic device which is shown in that patent has a supporting hook portion? A. It has.

Q. Is the supporting portion of that hook above or below the upper end of the fingers? A. Above.

Q. Substantially above? A. Yes.

Q. Does Figure 3 of the Carr patent show one of Carr's metallic devices as applied to a drape? A. Yes, it is.

Q. As so applied is the supporting hook portion of Carr's metallic device visible above the upper edge of the drapery? A. A little bit, yes.

Q. When you say "A little bit," approximately what fraction of the total length of the supporting hook is visible above the upper edge of the drapery? A. Approximately half of the hook is visible above [198] of the upper edge?

Q. Will you please look at Plaintiff's Exhibit No. 26, which is the Jantzen patent? I believe you testified earlier that the device shown in that patent had four fingers; is that correct? A. I don't recall what I testified about that before, but it definitely has four fingers.

Q. Two of those fingers extend upwardly and two of

them extend generally downwardly, do they not? A. That is correct.

Q. Does the Jantzen patent show any pleater tape? A. No.

Q. Does the Jantzen patent, Plaintiff's Exhibit No. 26, disclose the idea of inserting the several fingers of a metallic device into separate pockets? A. No, it does not.

Q. Will you please refer to Plaintiff's Exhibit No. 29, which is the Charlton patent and state how many pocket-engaging fingers Charlton's metallic device has? A. One.

Q. Will Charlton's metallic device, used in the way he discloses that it should be used, produce pleating of the drapery? A. No, it will not.

Q. Will you turn to the Vance patent, which is [199] Plaintiff's Exhibit No. 30, and state how many fingers the metallic device shown in that patent has? A. One.

Q. Does the Vance patent disclose the idea of a tape which is sewed on to a drapery to receive the fingers of a metallic device? A. No, it does not.

Q. Will you please turn to Plaintiff's Exhibit No. 31, which is the Steiner patent, and state whether or not the fingers of the metallic device shown in that patent are pointed? A. They are.

Q. Will you please take Plaintiff's Exhibit No. 31-A and apply it to Plaintiff's Exhibit No. 1, and state with respect to the fabric of that exhibit whether the fingers are perforating? A. They are.

Q. Does Steiner state what the purpose of the sharpened fingers is? A. Yes. They are to penetrate fabric of the curtain for the purpose of insertion for support.

Q. Does Steiner disclose the use of a tape to be sewn on to the drapery or otherwise applied to the drapery? A. No, he does not.

Q. Will you please turn to Plaintiff's Exhibit No. [200] 32, which is the French patent No. 2,183,188, and particularly to Figure 8 of the patent which, as I understand it, is the only figure of that patent about which you have testified; is that correct? A. Specifically, yes.

Q. I believe you stated that the metallic device disclosed in Figure 8 of the patent, Plaintiff's Exhibit No. 32, had two fingers. Is that correct? A. Yes.

Q. At the upper ends of those fingers there are eyelets, are there not? A. Yes.

Q. Does French state what the purpose of those eyelets is? A. I will have to refresh my memory on that; I believe he does.

Yes, in the second column, first page, line 47, it says: ". . . and terminate in small loops c^1 c^1 by which they may be sewn to the curtain heading."

Q. In other words, the purpose of those eyelets is so that the hooks may be sewn to the drapery, is that correct? A. That is the purpose he states.

Q. Does French disclose the idea of placing two fingers of the metallic device in separate pockets in a tape sewed to [201] the draperies or otherwise applied to the draperies? A. I think some of his language can be interpreted that way.

Q. To which language do you refer? A. His description in the specification, in the second paragraph, the object of the invention:

> "The main object of the invention is a suspension hook which will allow of being used simultaneously to pass into any two of the side-by-side hook-tubes, or pockets."

If those pockets are properly spaced that will then form a pleat when you pass them into the pockets.

Q. What does he say about the location of the two pockets? Does he say they are side by side? A. Yes.

Q. And if they are side by side of course there would not be any gathering of material, would there? A. That is rather indefinite language, and I couldn't say whether there would or wouldn't.

Q. Well, there is no clear disclosure of pleating there, is there? A. He doesn't use the word "pleating" in that connection.

Q. Well, apart from the precise words, he doesn't disclose the idea of gathering the fabric, does he? [202] A. Well, Figure 2 looks to me as if there is some gathering there in that picture.

Q. What in Figure 2 looks that way? A. The shaded line of the tape.

Q. But that's on the tape and not on the fabric, is it not? A. Well, the fabric shows nothing except the outline.

Q. You can't tell whether the fabric is gathered? A. No, you can't tell but it looks as though it were gathered.

Q. Though it might be the pockets in the tape? A. It is very indefinite.

Q. In other words, that disclosure is not clear? A. It is not.

Q. Will you please refer to Plaintiff's Exhibit No. 34, which is the French Patent No. 2,252,070, and particularly to the disclosure of Figure 42 of that patent?

I believe you stated that the hook, or metallic device, shown in Figure 42 had four fingers, did you not? A. Yes.

Q. In that count of fingers you are including those two short fingers at either side which terminate in eyelets at their upper ends, are you not? A. That's right.

Q. Does French state what the purpose of those two [203] eyelets is? A. I believe he does.

Q. And what does he state the purpose of those two eyelets to be? A. They may be sewn to the fabric.

Q. Those two outer fingers, as you have called them, are very much shorter than the two inner fingers, are they not? A. That's right.

Q. The two inner fingers are side by side, are they not? A. Yes.

Q. They appear to be in intimate contact along their full length, do they not? A. They are shown that way, yes.

Q. Will you please turn to Plaintiff's Exhibit No. 38, which is the Perlmutter patent No. 2,553,272? Does that patent disclose the use of a tape which is intended to be sewn or otherwise applied to a drapery? A. No, it does not.

Q. Will you please take Plaintiff's Exhibit No. 8, which is a sample of plaintiff's pleater hook has four pocket-engaging fingers? A. Yes, it has.

[204] Q. Are those fingers of narrow width? A. Yes.

Q. Do they have rounded upper ends? A. Well, the wire on the finger itself is sharp-ended, is cut off flush, and has a flat end and then apparently this has been dipped in lacquer which has been allowed to dry and has therefore formed a solidified drop on the end, which is generally hemispherical in shape.

[205] Q. Will you state whether or not in the pleater hook, Plaintiff's Exhibit No. 8, the four fingers are disposed in a single plane? A. Yes, they are.

Q. In that device is there a hook? A. Yes.

Q. Is that hook located between the two center fingers? A. Yes.

Q. Is the hook directed substantially at right angles to the plane of the fingers? A. It is.

Q. Does the hook have the supporting portion thereof below the upper ends of the fingers? A. Yes.

* * * * * * *

[206] Specimen of plaintiff's "Nip-Tite" pleater with paint removed from tip of one finger, was marked for identification as Defendant's Exhibit No. 2.

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[207] Q. I hand the witness this hook which has been marked as Defendant's Exhibit 2 for identification, and ask him to examine the hook and state whether or not the lacquer has been scraped off the end of one of the four fingers of that hook. A. Yes, it has.

Q. What is the shape of the finger from which the lacquer has been scraped? A. It has been cut off at right angles to the axis of the wire, leaving a substantially plane surface on the end.

Q. I ask the witness to compare the length of the finger from which the lacquer has been scraped with the length of the other fingers which still have the lacquer on them. A. It is slightly shorter.

Q. I ask the witness if he will, please, to take a pencil

and draw as well as he can, by reference to that Defendant's Exhibit No. 2, the cross-sectional shape of the tip of lacquer on those fingers of plaintiff's hook. A. (The witness complies with counsel's request.)

Q. And will you please draw it showing the thickness [208] of the lacquer? A. (The witness complies with counsel's request.)

Q. Will you please mark there on that drawing the location of the fingers and the location of the lacquer tip?

[210] Q. Will you please draw a greatly enlarged view of the cross-sectional shape of that lacquer showing the thickness of the lacquer, please? A. You mean the thickness up on the side?

Q. Yes, please. [211] A. I would have to have a pair of micrometers to compare the width of the thing.

MR. CONNER: I am not asking the witness to draw this to scale or to such a degree of accuracy as he would do if he had a micrometer. I am only asking that he make a representation of that showing the thickness of the lacquer.

MR. KALISH: Without reference to the proportions?

THE COURT: Without reference to any scale.

(The witness complies with counsel's request.)

A. That's a general representation of the cross-section on the end.

Q. In the sketch you have made the sides of the tip—I am speaking now of the outer surface of the lacquer—are perfectly straight and parallel to each other; is that correct? In general.

Q. Will you examine this pleater hook, Defendant's Exhibit No. 2, and state whether or not the tip is not [212] thickened? A. Where? At the very tip?

Q. At the tip where the globule is. A. Yes, it bulges out a little on most of them, there is a considerable lack of

uniformity, but in most of them it comes out a little and is slightly enlarged.

Q. Will you erase the previous line of that drawing so that it isn't confusing?

Will you please mark on that sketch which you have made the word "Tip" and draw a reference line to indicate the lacquer tip?

(The witness complies with counsel's request.)

[213] Sketch made by the witness Platt was marked for identification and received in evidence as Defendant's Exhibit No. 3.

REDIRECT EXAMINATION BY MR. KALISH:

* * * * * * *

[214] Q. Referring to that part of the language of Claims 1 to 4, inclusive, of the Loudon patent which speaks of a U-shape—first of all, let me ask you this:

Have you familiarized yourself sufficiently with the Loudon patent to know what is meant by the term "U-shape" in Claims 1 to 4, inclusive? A. Yes.

Q. Have you read the file history of the Loudon patent which has been offered in evidence as Plaintiff's Exhibit No. 21? A. Yes, I have.

Q. And have you read and studied the various rejections of the patent examiner of various claims that were presented by Loudon? A. Yes.

Q. And have you read the arguments that were presented on behalf of Loudon for the allowance of various claims? A. Yes.

Q. And have you read the arguments that were presented for the allowance of Claims 1 to 4, inclusive? A. Yes.

Q. And have you, as a result of your study of the patent, and its file history, become familiar with what this [215] U-shape is, in relation to the fingers of the Loudon device? A. Yes.

* * * * * * *

By MR. KALISH:

Q. I call your attention to that part of the description

in the Loudon patent-in-suit, which is in the second column of page 1, and in lines 33 to 35, inclusive, in these words:

> "This member 10 is made of a single piece of material, preferably wire, fashioned to form inverted U-shaped fingers of narrow width and having rounded upper ends."

Now, will you state whether the lacquer tip on the fingers of plaintiff's pleater, of Defendant's Exhibit 2, [216] are inverted U-shaped fingers?

THE WITNESS: No, certainly not.

MR. CONNER: I move to strike that, Your Honor.

THE COURT: It is only part of it. You read the language and then you only asked him about part of that language.

MR. KALISH: Well, all right; I will ask this—I don't want to include the single piece of material because obviously that is not a single piece of material. I will read only that part that goes to the U-shaped fingers.

THE COURT: Yes, but you read something about a rounded top, too.

MR. KALISH: Yes, I will go to that part of the language of the specification, which is in these words:

". . . fashioned to form inverted U-shaped fingers of narrow width and having rounded upper ends."

MR. CONNER: I object to this question, Your Honor.

If he wants to ask the witness—in fact I think he already has asked the witness whether or not the plaintiff's device has inverted U-shapes, but it's a different matter for him to ask the witness whether or not the language of the patent applies to this device.

He is asking the witness to rule on the question

of infringement, which I understand is the Court's province.

MR. KALISH: I am simply asking whether there is [217] present in the plaintiff's device certain mechanical elements.

THE COURT: You may answer.

THE WITNESS: These fingers are I-shaped and not U-shaped.

By MR. KALISH:

Q. If it were possible to slip off one of these plastic tips intact and had it off all by itself, would that be a U-shaped member? A. Not at all. It would be cylindrical with a hemispherical end.

Q. It would be like a tube? A. That's right, a tube with a closed, rounded end.

Q. And about what thickness would the wall of that tube be? A. Well, without a micrometer I couldn't say, but I would say very definitely not more than 5/1000 of an inch thick.

Q. Will you look over here where it has been scraped off? Take a pocket knife and draw a sharp line into it. A. Well, it varies a good bit in thickness. It is thicker right at the bottom edge than it is farther up. Farther up, where it has been scraped off, it certainly isn't more than 3/1000 of an inch but at the edge it may go up to 5/1000 of an inch.

By THE COURT:

[218] Q. Is a rounded top U-shaped? A. Well, a rounded top isn't necessarily U-shaped, because if it is hemispherical it is not U-shaped. A U is a line lying in one plane.

Q. Take a baseball bat, would the rounded top be U-shaped? A. No, certainly not.

By MR. KALISH:

Q. Are the lacquer tip fingers of Plaintiff's pleater, exemplified by Defendant's Exhibit No. 2, the mechanical equivalents of the U-shaped fingers shown in the Loudon patent? A. No, they are not.

* * * * * * *

[219] Q. When you were examined by Mr. Conner on the Knight patent, which is Plaintiff's Exhibit No. 23, and I will ask you to turn to the Knight patent—it is that British patent—Mr. Conner worded his question in this fashion:

He asked you whether the fingers are engaged in the drapery, and I think you gave your affirmative answer.

Now, will you look at the Knight patent again and see whether the fingers are engaged in the drapery, or whether they are engaged in a pleater tape applied to the drapery top? A. Yes, that's right, they are engaged in a pleater tape applied to the drapery top.

Q. And not directly into the drapery? A. Not directly into the drapery, no.

Q. I think in his question on the Carr patent he posed the question in the same way. He asked whether the fingers of the Carr pleater are engaged in the drapery, and I think you said they were.

Now, will you state, by looking at the patent, whether they are engaged in the drapery or in a tape applied to the drapery? A. They are engaged in a tape applied to the drapery.

Q. And in both of these cases, Knight and Carr, the tape provides vertical pockets for receiving the fingers of the pleater? A. Yes.

[220] Q. And the distance between the pockets is such, in relation to the distance between the fingers of the pleater, that if the fingers of the pleater are put into the adjacent pockets of the tape it will pleat both tape and drape? A. That is right.

Q. Looking to these pleaters, like that of Knight and like that of Carr, where the hook extends above the ends

of the fingers, have you seen, have you personally seen, drapery, pleated drapery? A. Yes, certainly.

Q. Do you have it in your home? A. Yes.

Q. Have you seen pleated drapery in which there is superimposed over the drapery a stationary structure—I don't know the name of it—a valance? A. A valance box.

Q. A valance box? A. That's what I have heard it referred to, yes

Q. And have you seen those? A. Yes.

Q. And the valance box includes probably a wood board with some fabric over it? A. Yes.

Q. And the front panel of that comes down over the top of the drape? [221] A. Yes.

Q. And conceals the uppermost edge of the drape? A. That's right.

Q. If these drapes, like that shown in Knight and Carr, are installed with a valance box, are the hooks then visible? A. No, they are not.

Q. Now, you were asked about Jantzen, which is Plaintiff's Exhibit No. 26.

In the Jantzen structure is there a hook by which the device is hooked on to a curtain rod? A. Yes.

Q. And is the bite of that hook substantially beneath the upper ends of the upwardly extending fingers? A. Yes.

Q. And where is it approximately in relation to your upwardly extending fingers? A. About half way up.

Q. And is there anything about the Jantzen device which would prevent the insertion of those fingers into the pockets of a pleater tape like Plaintiff's Exhibit No. 1—and I will ask you to take Plaintiff's Exhibit No. 26-A and apply it to the tape of Plaintiff's Exhibit No. 1. A. There is.

Q. Can it be applied? [222] A. Yes, it can.

Q. When it is so applied, does it pleat the tape? A. Yes, it can be applied so as to pleat the tape.

* * * * * * *

MR. CONNER: Excuse me, Mr. Platt, you have inserted this device, Plaintiff's Exhibit No. 26-A, into

nonconsecutive pockets of the tape, Plaintiff's Exhibit No. 1, have you not?

THE WITNESS: That is right; that's the way you get a pleat.

By MR. KALISH:

Q. Turn to the Charlton British patent, which is Plaintiff's Exhibit No. 29.

Do you see in there a multipocketed tape sewn to the top of a curtain or drape? A. Yes.

[223] Q. And into each of those pockets goes the single finger of a hanger? A. That's right.

Q. Will you look now to Figures 5 and 6 of the Loudon patent-in-suit and state whether that isn't also true of the disclosure in those figures? A. Yes, it is.

* * * * * * *

Q. Is the hanger, or the metallic part, in the Charlton patent, the hook part, cooperative with the tape at the top of the drape the same as or different than is shown in Figures 5 and 6 of the Loudon patent-in-suit? [224] A. It engages it in the same way.

Q. Is there any difference in the relationship between hook and tape in the one patent as against the other patent? A. No, there is not.

Q. And is the finger part, the part that engages into the pocket, is that in Charlton an inverted U the same as it is in Figures 5 and 6 of the Loudon patent? A. Yes, generally correct.

Q. I ask you to look beginning in line 35 of column 3 of the Loudon patent-in-suit and state whether what is shown in Figures 5 and 6 of the drawing of the Loudon patent-in-suit is or is not represented there as merely a modified form of what is shown in Figures 1 and 2 of the Loudon patent. A. That's what it says.

* * * * * * *

THE COURT: Yes, but I can't find the language that you are talking about.

MR. KALISH: It is in line 35 of column 3, on page 2, of the Loudon patent. It says:

"A modified type of hook member 27 is used with this form of pocket arrangement," and so on, and that refers specifically to Figure 6.

* * * * * * *

[225] THE COURT: All right.

By MR. KALISH:

Q. I will ask you to look at the two pages of printed literature of the defendant, in evidence as Plaintiff's Exhibits 44 and 45, and ask if you have examined these two pieces of literature. A. Yes, I have.

Q. Will you state whether in these two pieces of literature there is any reference, any explanation—well, first of all, do they show the device shown in Figure 2 of the patent-in-suit? A. Yes, they do.

[226] Q. Does this piece of literature point out the purpose of having the hook higher or lower in relation to the pleater? A. Yes.

Q. And what does it say? In other words, what is the purpose?

MR. CONNER: Excuse me. May I have the preceding question and answer read? I didn't hear them.

(The preceding question and answer were read by the reporter as above recorded.)

By MR. KALISH:

Q. And what is the purpose? A. I will read what it says. It says:

"Hooks shown with a higher hook as 1-A and 2-A and 4-A are used under valance box or other places where space does not permit use of the standard hook."

Q. In this literature of the defendant, is there shown, [227] in addition to the four-finger pleater of Figure 2 of the patent, also a two-finger pleater and a one-finger pleater? A. Yes, both of them are shown.

[233] Q. Mr. Platt, I ask you to look at plaintiff's pleater, which is Plaintiff's Exhibit No. 9, and contrast it, if you will, with the specimen of plaintiff's pleater which is Defendant's Exhibit No. 2, and state whether the lacquer or the ends of the fingers on that pleater of Plaintiff's Exhibit No. 9 is hemispherical or whether it is more nearly flat? A. Definitely not hemispherical and very nearly flat, I would say.

THE COURT: I would have preferred if the witness had described, rather than counsel. Can we have him describe what he sees there?

By MR. KALISH:

Q. Will you describe the shape of the lacquered ends of the fingers of Plaintiff's Exhibit No. 9? A. Well, the lacquer on the fingers of Plaintiff's Exhibit No. 9 is quite flat on the ends. In fact, it departs very little from the contour of the bare wire; while on Defendant's Exhibit No. 2 there is a hemispherical tip of lacquer which is the result of a drop having hardened there.

Q. Have you at my request picked up a fresh package of plaintiff's pleaters, like Plaintiff's Exhibit No. 9 and brought it with you? A. Yes, I have.

Q. Will you produce that? [234] A. (The witness complies with counsel's request.)

Q. Is that the original package, without having been opened? A. Yes; it has not been opened.

Q. Has it been in your possession since it came off the display rack? A. Yes, it has.

Q. Have you examined the ends of the fingers of that batch of hooks? First of all, are those hooks the same as the hooks of Plaintiff's Exhibit 9, in construction and detail? A. They are except that they have the high hook, I believe, instead of the low hook.

Q. In other words, that's for a ceiling installation? A. Yes.

Q. And except for the position of the hook, is the construction the same? A. Yes, it is.

Q. And can you through the transparent envelope examine the ends of the fingers? A. I can.

Q. And what is the shape of the lacquered ends? A. On most of the ends it is substantially flat; a few rounded but none of them could be desribed as hemispherical or anywhere near it.

[235] MR. KALISH: I offer this in evidence as plaintiff's exhibit of the next number.

* * * * * * *

Transparent bag containing ten "Nip-Tite" pleaters was marked for identification and received in evidence as Plaintiff's Exhibit No. 46.

* * * * * * *

[237] MR. KALISH: I will ask to have marked for identification one of plaintiff's pleater hooks with a swing arm, and one without the swing arm, which defendant's counsel has just produced, and I ask that they be marked as Plaintiff's Exhibits 47; the one without the swing arm being 47-A and the one with the swing arm 47-B.

[238] Specimen of plaintiff's "Bestpleat" pleater, without the swing arm, was marked for identification as Plaintiff's Exhibit No. 47-A.

Specimen of plaintiff's "Nip-Tite" pleater, with swing arm, was marked for identification as Plaintiff's Exhibit No. 47-B.

* * * * * * *

Q. Will you state, on such of the fingers which have their ends covered with lacquer, what the shape of the lacquered end is? A. The end of the lacquer tip on all of these is nearly flat.

Q. How many of the fingers of these two pleaters have the end bared of all lacquer? A. None of them is entirely bare.

Q. Well, which one of them is bared at all? How many? [239] A. All four tips of the one that hasn't the swing arm—that's Plaintiff's Exhibit 47-A—have had the lacquer partially scraped off.

* * * * * * *

Q. . . . Now, will you state how many of the fingers of the pleater of Plaintiff's Exhibit No. 47-A, that is without the swing arm, have the end of the wire, meaning the very end, bared of the lacquer? A. One of them is bare and the other three are covered.

[240] Q. And of the three that are covered with lacquer, what is the shape of the lacquer-covered end, meaning the lacquer on the end? A. Substantially flat.

Plaintiff's Exhibits 47-A and 47-B were received in evidence.

[242] Q. Well, let me ask you this. Considering a plain, bare, unlacquered wire, whose end is shaped round, hemispherical in precisely the same shape as the lacquered ends of the fingers of Defendant's Exhibit No. 2, is there in such a plain wire a U-shape in the same sense in which Mr. Conner suggested yesterday in respect to the lacquered ends of Defendant's Exhibit No. 2? A. There is no difference in the two so far as the shape of the finger is concerned. Neither of them is U-shaped.

Q. Well, let me put it to you this way: If it were to be conceded that the lacquer-ended fingers have in them, by some theory which Mr. Conner advanced yesterday, if it were to be conceded that by that theory they had in them a U-shape, would the bare wire have a U-shape in it? A. Certainly.

Q. What is the true geometric shape of this lacquer, this little lacquer, if it were possible to remove it from the ends of the fingers of Defendant's Exhibit No. 2? A. It is a tube with a closed end.

Q. Is such a tube fairly regarded as a U-shaped member? [243] A. No.

Q. Are such closed-end tubes for rounding ends of common articles commonly used? A. Oh, yes; certainly.

Q. Can you give an example? A. Well, there is a rubber tip on a crutch; a finger of a glove.

Q. Would this be a fair illustration of a plastic tip on the end of a flat-ended finger? A. Yes, surely.

A crutch with rubber tip at the bottom was marked as Plaintiff's Exhibit No. 48 for identification.

Q. Is that a common expedient in daily use? A. Yes, it is.

Q. Have you ever heard of such a tip as this rubber tip on the end of this crutch called a U-shaped member? A. Never.

Q. Have you examined the file history of the Loudon patent, and can you point out — well, I think you have already testified that you have examined it.

[244] May I borrow the original exhibit? Is there any reference or suggestion in either the patent-in-suit, or the file-wrapper, which is Plaintiff's Exhibit No. 21, that a thin lacquer wall covering the end of a bare strand of wire was to be regarded as the equivalent of the U-formation which the patent shows as being bent by folding the wire back upon itself? A. There is no such reference or suggestion in either the file-wrapper of Plaintiff's Exhibit No. 21, or in the patent-in-suit.

[245] Q. Is there any suggestion, either in the patent-in-suit or in the file-wrapper thereof, which is Plaintiff's Exhibit No. 21, of any other way of having a U-shaped finger, other than by bending a wire into a U-shape? A. No, there is not.

MR. CONNER: Objection. He is asking the witness whether there is a suggestion.

THE COURT: Sustained.

MR. KALISH: I asked whether the patent-in-suit, or the file-wrapper, discloses any way of having a U-shaped finger other than by bending a wire into U-shape.

THE WITNESS: No.

. . . . . .

[251] Q. Would there be any unexpected result flowing from the lowering of the hooks of the Carr or the Knight device to put them in the same relation, in relation to the fingers, where Steiner puts them? A. No, there would not.

MR. CONNER: Objected to, Your Honor. He is asking this witness whether the result would be unex-

pected. And expected to whom? To him? Or to a man skilled in the art?

MR. KALISH: A man skilled in the art as reflected by the prior art patents.

MR. CONNER: I don't believe he has been qualified as a man skilled in the art.

THE COURT: You may answer the question as restated.

THE WITNESS: Will you please ask the question again?

By MR. KALISH:

Q. Would there be any unexpected result, that is unexpected to a person skilled in the art, to lower the hook of the Carr device or of the Knight device to place it in the same general relationship to the height of the fingers as is shown in the Steiner patent? [252] A. No, there would be no unexpected result.

Q. Would such relocation of the fingers from above the ends of the fingers to somewhat below the ends, or midway of the finger, be anything beyond the competence of a person having ordinary skill in the art?

THE WITNESS: No, there is nothing that would not be within the competence of anyone.

Q. Is there anything in the addition of additional fingers to these prior art patents, such as Carr or Knight, or any of the other two-finger arrangements, which would be beyond the competence of a person skilled in the art, if more than two fingers were wanted? A. No.

Q. Is there anything in the lengthening or shortening [253] of these fingers, as for instance Figure 42 of the Roger French patent, if it is desired to make the fingers longer or shorter for any purpose, which would be beyond the skill or competence of the ordinary person skilled in the art? A. No.

Q. I think on your cross-examination by Mr. Conner yesterday you gave your assent to his statement that the small eyelet on the end of the shorter fingers in Figure 42 of the Roger French patent, which is Plaintiff's Exhibit No. 34, were intended to be sewn to the fabric.

Have you since then refreshed your recollection by reference to the specification of this patent, and can you now state whether that is so? A. Yes, I have.

Q. And what is the fact as far as the specification is concerned? Does Roger French say to sew these eyelets to the fabric, or what does he say about them? A. No, I find, on reexamining the patent, that he does not state that they are to be sewed on but that they are to be [254] inserted in the pockets in the tape shown in Figure 40.

RECROSS-EXAMINATION BY MR. CONNER:

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[262] REDIRECT EXAMINATION BY MR. KALISH:

[263] Q. Was the narrow finger, the idea of having the fingers narrow, was that new in the art in December, 1949? A. No.

Q. That is shown? A. Oh, yes; there are many examples in the prior art of narrow fingers.

Q. And was the idea of having the four fingers in a single plane, was that new in the art? A. No. That is shown in Steiner particular, and also in French, Figure 2.

Q. That is Roger French? A. Roger French.

Q. Was the idea of having the hook between the two center fingers new in the art? A. No. That was old.

Q. In what, for instance? A. Well, Carr and in fact practically all of them; Ashwell.

Q. What about Steiner? A. Steiner; and again, Roger French.

Q. Was the idea of having the hook below the ends of the fingers, was that new? A. No, it was not. That is shown again in Steiner very clearly.

Q. And what about the Ashwell patent, does that show [264] the hook below the ends of the fingers? A. Yes, it does.

Q. Did it involve anything more than the normal expected competence of a person skilled in the art to make a pleater with four fingers each inverted U-shaped members, in view of the prior art? A. No.

Q. Did it involve anything beyond the normal expected competence of a person skilled in the art, prior to the filing date of the patent-in-suit, of course, to make a pleater like that defined in each of the four claims, 1 to 4 of the patent-in-suit, in view of the prior art? A. The first four claims of the patent-in-suit?

Q. Yes. A. No, it did not.

Q. Coming to Claim 5, is there any element of Claim 5 which is not fully disclosed, any feature of Claim 5 which is not fully disclosed in the prior art in evidence here? A. No, there is not.

Q. Will you point out in the prior art where the curtain, draped upper end of the curtain, is supported from [265] the ends of the fingers? A. In Charlton it is clearly supported from the ends of the fingers.

Q. How about the second Perlmutter patent? A. Yes, in Perlmutter.

Q. Did it involve anything more than the normal competence of a person skilled in the art, prior to the filing date of the patent-in-suit, to support the curtain, pleat the curtain and to support the curtain, as defined in Claim 5, in view of the prior art? A. No, it did not.

RECROSS-EXAMINATION BY MR. CONNER:

Q. When did you read the prior art patents, Exhibits 22 to 39, inclusive, for the first time? A. It was Thursday of last week, I believe.

Q. Prior to that time had you had any professional experience in the drapery art? A. No professional experience, no.

MR. CONNER: No further questions.

[266] By MR. KALISH:

Q. Have you had any personal experience in hanging draperies? A. Hanging them around the house, yes.

Q. And have you been familiar for any appreciable length of time with how draperies are hung and pleated? A. Yes, for many years.

Q. Prior to 1949? A. Yes, indeed.

[267] The crutch, with rubber tip at the bottom heretofore marked for identification, was received in evidence as Plaintiff's Exhibit No. 48.

Drapery, with plaintiff's "Conso" "Bestpleat" tape sewn to top thereof, was marked for identification and received in evidence as Plaintiff's Exhibit No. 49.

[268] Box (empty) in which plaintiff's "Bestpleat" tape and pleaters are packaged and sold was marked for identification and received in evidence as Plaintiff's Exhibit No. 50.

Box (empty) in which plaintiff's "Bestpleat" tape and "Nip-Tite" pleaters are packaged and sold was marked for identification and received in evidence as Plaintiff's Exhibit No. 51.

[269] MR. KALISH: That concludes plaintiff's case.

I would like to note on the record, if I may, that plaintiff's president, Mr. Joseph Bernhard has been here throughout the trial and will remain here through the rest of the trial. I note that of record only because there has been some suggestion on the part of defendant's counsel of his desire to have him here.

THE COURT: Very well. The plaintiff rests?

MR. KALISH: Yes.

[270] An individual "Empire" slip-on pleater-hook like those of Plaintiff's Exhibit No. 43 was marked for identification and received in evidence as Plaintiff's Exhibit No. 43-A.

THE COURT: Then the plaintiff rests?

MR. KALISH: Yes.

EVIDENCE ON BEHALF OF THE DEFENDANT

MR. CONNER: We would like first to offer in evidence as Defendant's Exhibit No. 4 a copy of Canadian patent No. 496,061 which was issued to the defendant on September 15, 1953, on an application filed May 31, 1945.

MR. KALISH: I should like to object, and I do object, to the receipt in evidence of this document as it has no bearing on this suit. It is not relevant to any issue in this sut. It is not the patent-in-suit; that is to say, it is not the patent being asserted against plaintiff's products.

It is not a piece of prior art so far as I know; at least that is not the purpose for which it is offered I am sure, and unless counsel can show what its relevance to this case is, I submit it should not be admitted.

MR. CONNER: If it please the Court, this patent was granted on an application filed in Canada at the same [271] time the defendant filed her first application for patent in the United States. The two patent applications correspond and cover the same invention.

And I offer it for several purposes. One is to show that the Canadian Patent Office, as well as the United States Patent Office, granted the defendant a patent on this invention; and also to show that there are differences in the wording of the Canadian and U. S. patent claims so that it may be appreciated that it is not necessary to give to the wording of the claims in the U. S. patent a limited interpretation in order to make those claims patentable over the prior art patents which plaintiff is relying on.

MR. KALISH: Well, I submit, of course, that this Court cannot fairly consider the wisdom of the action of the Canadian Patent Office in granting the Canadian patent on the Canadian patent laws and the decisions of Canadian Courts.

Moreover, for this Court to compare the claims of Canadian patents with that of the U. S. patent, and thereby give the U. S. patent the scope which the Canadian office gave the Canadian patent would be completely outside the proper realm of this trial. It would involve a consideration of the file history of the Canadian patent and the Canadian law.

THE COURT: I think the objection is good, Mr. Conner. The Court sustains the objection to Defendant's [272] Exhibit No. 4 for identification.

MR. CONNER: May it be marked for identification?

THE COURT: It will be marked as Defendant's Exhibit No. 4 for identification.

Canadian patent, No. 496,061, issued September 15, 1953 to Florence F. Loudon was marked for identification as Defendant's Exhibit No. 4.

RONALD DAVIS was called as a witness by the defendant:

DIRECT EXAMINATION BY MR. CONNER:

Q. Will you please state your name? A. Ronald Davis.

Q. Where do you live, Mr. Davis? A. In Toronto, Canada.

Q. With what company are you associated? A. Cooper-Davis, Limited.

Q. Where is that company located? A. In Toronto.

Q. In what capacity are you associated with Cooper-Davis Company, Limited? [273] A. Sole owner.

Q. In what business is Cooper-Davis, Limited, engaged? A. Draperies; making slipcovers; upholstery; and trimmings of all kinds.

Q. Do you make any trimmings? A. No, sir.

Q. You just sell them, is that correct? A. That's right.

Q. Do you sell drapery pleater-hooks and pleater-tape

of the general type with which this suit is concerned? A. Yes, sir.

Q. When was your company organized? A. In 1949.

Q. Have you been with the company all of the time since 1949? A. Yes, sir.

Q. What experience, if any, had you had in the drapery field prior to the formation of Cooper-Davis Company? A. Prior to '49 I was with the T. Eaton Company of Toronto, from 1920 until 1949.

From '30 to '43 I was with the T. Eaton Company, Limited of Halifax, Nova Scotia.

Q. During that time you were with the Halifax division of the Eaton Company, in what department of the company were you employed? [274] A. In the drapery department.

Q. And did you have any position of responsibility in the drapery department? A. I was manager of that department.

Q. And between 1943 and 1949, how were you employed? A. From '43 to '49 I was with the T. Eaton Company, Limited in Toronto, their better-class store, the College Street store, in the curtain department.

Q. What type of organization is the T. Eaton Company? Is that a department store? A. It is a very large departmental store; in fact I would say the largest in the British Empire.

Q. Does it have more than one branch? A. Yes; it has branches from coast to coast.

Q. During the time you were manager of the drapery department of the Halifax branch of the Eaton Company, will you please describe the nature of your duties? A. Well, the nature of my duties, while in Halifax, I had charge of the department—I had a staff under me. I had full responsibility of the running of the organization. I had a work room, comprised of a work room, and gave all instructions pertaining to that department.

Q. Did your duties involve the buying of drapery trimmings for the store? A. Yes, sir.

[275] Q. Where did you do your buying? A. In Canada and the United States.

Q. Where in the United States? A. In New York.

Q. Did your duties at that time also involve the actual installation of draperies? A. Very definitely.

Q. Did your duties also involve the training of other employees in the proper method of the installation of draperies? A. Yes, sir.

Q. At the present time, as owner of Cooper-Davis, Limited, do your duties involve the buying of drapery trimmings? A. Yes, sir.

Q. And do your duties also involve the personal installation of draperies, as well as the supervision and the instruction of others in the art of drapery hanging? A. Yes, sir.

Q. During the time that you have been buying drapery trimmings, have you had occasion to become familiar with the various types of drapery hooks? A. Yes, sir.

Q. Available on the market in the United States and Canada? A. Yes, sir.

Q. Will you please describe the types of drapery hooks [276] which were actually available on the market in the United States and Canada prior to the late '40s?

MR. KALISH: I object to that. This witness can't possibly testify to anything more than the drapery pleaters and hooks and devices which came to his attention.

I object to the question if this witness is to testify as to what all there is in the United States or in Canada.

All he can testify to is what came to his attention, and I submit that many things could have existed without him knowing about it.

THE COURT: Well, it will be limited to his personal knowledge.

MR. KALISH: All right.

MR. CONNER: Will you re-read the question, please?

THE REPORTER (Reading):—

"Question: Will you please describe the types of drapery hooks which were actually avilable on the market in the United States and Canada prior to the late '40s?"

A. *Principally* sew-on hooks and the pin-on type hooks; that is for valance purposes only.

By MR. CONNER:

Q. I hand you the hook which is in evidence as Plaintiff's Exhibit No. 30B, and ask whether you recognize that type of hook. [277] A. Yes, I do.

Q. By what common name is that type of hook known in the trade? A. Sew-on hook, sir.

Q. At the upper and lower ends of that hook there are eyelets of generally triangular, or, perhaps more accurately, heart-shaped configuration; will you please state what the purpose of those eyelets is? A. The actual purpose of those eyelets, where there is a slight concave in the center, is principally for thread so that the thread will not slip off the edges, to hold and support the hook on the curtain.

Q. When you say "thread" do you mean this eyelet is sewn through to attach the hook to the drapery? A. That is correct.

Q. You referred to a pin-on hook, in addition to a sewn-on hook, as being available on the market. Will you describe that hook in general terms, please? A. Principally the pin-on hook is a form of a pin which is inserted into the curtain which has a looped top that goes into the ring or on the roller on the rod.

Q. That looped top that you speak of is the part which corresponds in function to the supporting hook of these types of pleaters that we have been talking about in the present suit, isn't that right? [278] A. Right.

Q. And that pin-on hook, as I understand your testimony, is attached to the drapery by a pointed and being inserted through the fabric of the drapery, or through the lining attached to the fabric? A. Correct.

MR. KALISH: I would like not to have to interrupt, but I would ask that counsel be instructed not to lead the witness. I would like the witness to tell how these things are. I don't want to interrupt if I can help it.

THE COURT: Yes, that is correct.

By MR. CONNER:

Q. Prior to the late 1940s, so far as you know, was there available on the market in either the United States or Canada any type of pleater-hook? A. To my knowledge, no, sir.

Q. When a decorator or a housewife wished to form a pleated heading of the type seen, for example, on this drape which plaintiff has offered in evidence as Plaintiff's Exhibit No. 49, using either the pin-on hook or the sew-on hook, will you please describe the operations that she had to go through in properly spacing the hooks along the drapery in order to achieve uniform pleat spacing? A. Prior to this type of a heading, a pinch-pleated heading, all headings were made by hand, by experienced [279] seamstresses. And in each case they had to be instructed very, very carefully in the operation of making these pleats; they had to be spaced evenly apart, and when given instructions by a fully experienced person invariably they are often wrong when completed. Therefore, it has to be made over again. And that's why I say that the hand-made pleat is very, very difficult to make.

Q. When we use the term "pleater-hook," what does that term mean to you. That is, what is its accepted meaning in the art? A. Well, a pleater-hook, my description of a pleater-hook actually is a hook that is inserted into a tape that has fingers to form a pinch-pleat.

Q. When did you first see a pleater-hook? A. The first experience I had of finding the pleater-hook was one time in 1949 when I was on a trip to Ontario, on my holidays, and went into one of the Eaton stores and saw this on display in one of their stores.

I became immediately interested because I could see the advantage of the time-saver and many other things. So I got the name of this pleater-tape "No-so" which was also made by Mrs. Loudon in Toronto, and since that time I have carried that product.

Q. Would you recognize the type of hook which you saw at that time? [280] A. Yes, sir.

Q. I hand you a hook and ask whether or not that is identical with the hook which you stated that you saw for the first time. A. It is, sir.

* * * * * * *

[281] Specimen of defendant's "No-so" four-finger pleater was marked for identification as Defendant's Exhibit No. 5.

Q. When was it that you saw this pleater-hook, such as Defendant's Exhibit No. 5, in the Easton store in Pembroke? [282] A. For the first time in 1949.

Q. And prior to that time had you ever seen a pleater-hook? A. No, sir.

Q. At the same time that you saw the pleater-hook, such as Defendant's Exhibit No. 5 for the first time, did you also see on sale in the Eaton Company store some pleater-tape? A. Of the "No-so" type, yes.

Q. Would you recognize that type of tape? A. Yes, sir.

Q. I ask the witness to examine the strip of tape which is sewed at one edge of this sample of drapery fabric, and state whether or not the tape which he saw for the first time in 1949 was identical with the specimen which I hand him. A. Yes, sir.

Q. When you first saw this type of hook and tape, what was your impression of it?

(Here plaintiff's objection was overruled.)

[283] A. I found a great many things that appealed to me in respect to this tape and hook in a saving of time for the average customer that's making her own drapes.

It is so simple and so easy of operation that I could see a great many more yards of goods being sold over my counter than in the past.

Q. Will you please describe to the Court in very brief terms how that hook and tape are used together to produce pinch-pleats in the drapery? A. The four fingers are supplied for the insertion into the opening into the tape so that it forms a pleat which when completed gives you a very symmetrical work.

Q. Is the hook readily removable from the tape? A. Yes, sir.

Q. Is it important that the hook be removable from the tape? A. For the sole purpose of dry cleaning or washing, whichever a customer wishes to do.

Q. With the sew-on type hook, if the user of the draperies wanted to wash or dry clean the draperies, what had to be done with respect to the hooks? A. Well, there are a great many things that really have to be done with respect to a drape that has to be dry [282] cleaned or washed. You have to remove each one of those hooks for the purpose of cleaning, and then there is a great task of sewing those hooks back on again.

* * * * * * *

A piece of defendant's "No-so" tape sewn to the top of piece of drapery material was marked for identification as Defendant's Exhibit No. 6.

Q. I ask the witness whether or not he is currently selling in his store, in Toronto, pleater-hooks and tape of the type exemplified by Defendant's Exhibits 5 and 6. A. Yes, sir.

[285] For how long a time have you sold hooks and tape of this type? A. Since '49, sir.

Q. Has it been a commercially successful item for you? A. Very, definitely.

Q. Are you currently handling in your store, in

Toronto, any other types of pleater-hooks and pleater-tape? A. Yes, sir.

Q. Who are the manufacturers of those other types which you handle? A. Eastern Machine Company, which have a branch in Canada, and also Judd Tape & Hooks.

Q. Are you also familiar with pleater-hooks and pleater-tape sold by the Kirsch Company? A. Yes, sir.

* * * * * * *

Q. I hand you a length of tape with a pleater-hook inserted into pockets of the tape, and ask you whether you recognize that tape and hook.

(Here Plaintiff's objections were overruled.)

[290] A. Yes, I do.

Q. Do you know who manufactures that tape and hook? A. Yes, sir.

Q. Who? A. Kirsch Manufacturing.

Q. That is the Kirsch Manufacturing Company of Sturgis, Michigan? A. Yes.

(Here plaintiff's objections, to the foregoing question, were overruled.)

[291] Kirsch Company's four-finger pleater was marked for identification as Defendant's Exhibit No. 7-A.

Piece of Kirsch Company's "EZ pleat" tape was marked for identification as Defendant's Exhibit No. 7-B.

Q. I hand the witness another length of pleater-tape with a pleater-hook inserted in the pockets thereof.

Q. I ask the witness whether he handles that pleater-tape and pleater-hook in his store in Toronto. A. Yes, I do.

Q. Do you know where that particular specimen of tape and that particular hook that you have in your hand came from? [292] A. Yes, sir.

Q. Where did that come from? A. That is Eastern.

THE COURT: Is that all there is to it?

THE WITNESS: It is Eastern Machine, I think, of Toronto, Canada, sir, but I think it is Eastern something else here in America, still connected with the same firm.

By MR. CONNER:

Q. In order to shorten this, let me ask you whether or not you handed me that particular length of tape and that particular hook. A. I did, sir.

Q. And where did that come from? A. That came from my own store.

(Here plaintiff's objections were overruled.)

[293] Specimen of Eastern's four-finger pleater was marked for identification and received in evidence as Defendant's Exhibit No. 8-A.

A piece of Eastern's tape was marked for identification and received in evidence as Defendant's Exhibit No. 8-B.

Q. I hand the witness another length of tape with a pleater-hook inserted into the pocket thereof and ask him whether or not he handles that tape, and pleater-hook in his store in Toronto. A. Yes, I do.

Q. Do you know where that particular sample of tape and that particular pleater-hook which you have in your hand came from? A. Yes, sir, I do.

Q. Where did they come from? A. Judd Manufacturing Company.

Q. Speaking of this particular length of tape and this particular pleater-hook which you have, who gave them to me, do you know? A. I gave this to you, sir.

[294] Q. Do you know where it came from? Where did you get it? A. It came out of my own store.

* * * * * * *

(Here Plaintiff's objections were overruled to the receipt in evidence of Defendant's Exhibits 9-A and 9-B.)

[295] Specimen of Judd Company's four-finger pleater was marked for identification and received in evidence as Defendant's Exhibit No. 9-A.

A piece of Judd Company's "Pleatmaster" tape was marked for identification and received in evidence as Defendant's Exhibit No. 9-B.

Q. Will you please look at this Kirsch pleater-hook, Defendant's Exhibit No. 7-A and state whether or not it has four fingers? A. Yes, sir.

Q. Are those fingers of inverted U-shapes?

(Here Plaintiff's objections were overruled to the receipt in evidence of Defendants' Exhibits 9-A and 9-B.)

[296] Q. Are the fingers of this hook, Defendant's Exhibit No. 7-A, of inverted U-shape? A. Yes, sir.

Q. Will the witness please examine the hook, Defendant's Exhibit No. 8-A, that is the Eastern hook, I believe, and state whether or not it also has four upstanding fingers? A. Yes, it has.

Q. Will you please state whether or not those fingers are of inverted U-shape? A. They are of inverted U-shape.

(here Plaintiff's objections to previous question, overruled.)

[300] Q. Mr. Davis, do you sell the hooks of one manufacturer in combination with the tape of a different manufacturer on any occasions? A. Yes, sir.

Q. Are the hooks, the pleater-hooks, that is, of the various manufacturers whose products you handle in your store, interchangeable with one another? A. Yes, sir.

Q. And are the tapes manufactured by the various manufacturers which you handle in your store also interchangeable? A. Yes, sir.

Q. I hand the witness the specimen of tape which is in evidence as Defendant's Exhibit No. 6—and this is the defendant's own tape, Your Honor—together with the pleater-hook which is in evidence as Plaintiff's Exhibit No. 8—and this is the plaintiff's hook, Your Honor—and ask the witness to insert the fingers of the hook into the pockets of the tape, if he can. A. (The witness complies with counsel's request.)

Q. Did you insert the fingers of hook, Plaintiff's Exhibit No. 8, into the pockets of the tape, Defendant's Exhibit No. 6? [301] A. I did.

Q. Did you have any difficulty in doing so? A. No, sir.

Q. Does that hook, Plaintiff's Exhibit 8, cooperate with the tape, Defendant's Exhibit 6, in the same way that the defendant's own hook, as examplified by Defendant's Exhibit No. 5 did?

* * * * * * *

(Here Plaintiff's objections were overruled.)

[302] Q. I ask the witness to insert the fingers of the defendant's hook, Defendant's Exhibit No. 5, and state whether or not those two hooks cooperate with the tape in the same way. A. Exactly the same way, sir.

THE COURT: He is now testifying to what he has done, in the presence of the Court, I take it.

By MR. CONNER:

. . . . . .

Q. I ask the witness to state whether any differences exist between the functions of those two hooks, and if so, what those differences are. A. No difference.

[303] Q. I ask the witness whether those two hooks perform their functions in the same way. A. Exactly the same way.

Q. Are these two hooks, Plaintiff's Exhibit 8 and Defendant's Exhibit 5, the practical equivalent of each other? A. Yes.

. . . . . .

[308] A piece of plaintiff's "Conso" "Bestpleat" tape was marked for identification as Defendant's Exhibit No. 10.

. . . . . .

[309] The tape heretofore marked for identification was received in evidence as Defendant's Exhibit No. 10.

Q. I ask the witness to examine closely the upper corners of the pockets in that tape and state whether or not those upper corners are perfectly square or whether they are inclined inwardly.

(Here Plaintiff's objections were overruled.)

[311] A. They are inclined inwardly.

Q. I ask the witness to take this pair of scissors and to cut one of those pockets open, along its full length. A.

(The witness complies with counsel's request.)

Q. Now I ask the witness to unravel the thread along one of those edges, and describe what happens when the thread is unraveled.

(The witness complies with counsel's request.)

Q. What happened as that thread broke loose from the fabric? Pull it on down and back up until it is unraveled. Now, what happens when it reaches the top? A. It turns in toward the center.

[312] Q. Will you please state whether or not that thread which forms the outer layer of the pocket, when it reaches the upper corner of the pocket and turns inwardly, where does it go? A. Directly to the center.

MR. KALISH: Mr. Witness, are you speaking of the weft thread or the warp thread? Do you know which is which?

THE WITNESS: Yes, I do.

MR. KALISH: Is it the weft or the warp that reaches to the center?

[313] THE WITNESS: It is the warp.

MR. KALISH: The warp thread reaches to the center?

THE WITNESS: Yes.

MR. KALISH: And the warp thread in your estimation is the one that runs lengthwise of the tape?

THE WITNESS: That's right, and that is the thread that reaches the center.

MR. KALISH: And the thread that you have been unraveling is the thread that runs cross-wise, is that correct?

THE WITNESS: That is true.

By MR. CONNER:

Q. So that there won't be any confusion with the terminology of warp and weft, will the witness describe the location of that thread with respect to the fabric, or more specifically, describe its location with respect to the outer

layer of the pocket? Does it run cross-wise of the fabric or does it run length-wise? A. Would you call this (indicating length-wise, or this way?

Q. This would be length-wise; that is the longer dimension of the tape. Cross-wise would be across the shorter [314] dimension of the tape. A. It runs cross-wise.

* * * * * * *

Q. Will you examine the outer layer of the fabric of each of those pockets and state whether the upper edge of that outer layer is any thicker or heavier than the rest of the outer layer of the pocket? A. It is definitely heavier at that point.

Q. What is the effect on the inner dimensions of that pocket which results from thickening of the upper edge of the outer pocket, and from the inward inclination of the lateral edges of the pocket? A. It closes it.

Q. It tends to close the upper end? A. It tends to close on the upper corners.

Q. When a pleater-hook is installed on the tape, and the fingers are inserted upwardly into the pockets of the tape—[315] with the tape of course installed on a drapery and with the fabric of the drapery causing the upper edge of the pleat to flare outwardly, as you previously testified—what would tend to happen with respect to passage of the fingers through the upper end of the pocket? Would it tend to snag or would it tend to go through freely? A. It wouldn't go through freely.

Q. In your own store in Toronto how many pleater-hooks of the general type with which this suit is concerned do you sell in the course of a year? A. In the vicinity of around 25,000.

Q. How many stores are there in Toronto? A. Around 35 drapery stores I would say that carry the pleater-type header.

MR. KALISH: I object to that unless this witness knows and unless he has made a survey, this witness hasn't shown qualifications to show how many stores handle this particular hook.

MR. CONNER: He is probably better qualified than anyone in the court room, Your Honor.

THE COURT: Objection overruled.

* * * * * * *

[316] By MR. CONNER:

Q. I believe you said, Mr. Davis, that you also custom-make draperies in your store in Toronto. A. That is correct.

Q. Do you deal with pleater-hooks of the type exemplified by Defendant's Exhibit No. 5, and pleater-tape of the type exemplified by Exhibit No. 6 in the custom-making of draperies? [317] A. Yes, sir.

Q. Do customers ever ask you specifically for *that type of hook* and that type of tape in their custom-made draperies? A. Very definitely.

Q. What advantage is there to the housewife in having that type of hook and that type of tape used in custom-made draperies? A. Well, it so simplifies the cleaning. Also, if they want to take them outside and air them in the sun they can take the hooks out and hang them out straight, and put the hooks back in on the return.

Q. I ask the witness to examine this group of patents, Plaintiff's Exhibits 22 through 39, inclusive, and state with respect to each patent whether or not he has ever seen on the market in the United States or in Canada devices of the type shown in those patents.

* * * * * * *

(Here Plaintiff's objections were overruled.)

[318] A. Do you wish me to mention them singly?

By MR. CONNER:

Q. If you will, please. A. I have never seen specimen No. 22.

MR. CONNER: That is the Nachmann patent.

A. (Continuing) Nor have I ever seen specimen 23.

MR. KALISH: You mean Exhibit 23.

THE WITNESS: Yes. I have never seen it.

By MR. CONNER:

Q. That is the Knight patent.

THE COURT: Yes, that is the Knight patent.

THE WITNESS: Exhibit 24 I have never seen.

MR. KALISH: That's the Carr patent.

By MR. CONNER:

Q. You mean, of course, that you have never seen any device of the type shown in that patent, Exhibit No. 24? A. That is correct. 25 likewise.

THE COURT: What about 25?

THE WITNESS: 25 I have never seen, sir.
26 I have never seen.
The same for No. 27.

[319] MR. KALISH: What is the name of 27?

THE WITNESS: Fleming.

THE COURT: That's Fleming.

MR. CONNER: That seems to be a garment supporter.

THE WITNESS: 28, I have never seen that one; that is the Brewington.
29, I have never seen that.
30, I have seen.

By MR. CONNER:

Q. When you say you have seen, to what specific part of that patent do you refer? A. This hook I presently carry in stock. It is typically the old-fashioned type hook that you sew on to a heading of the drape.

Q. You are referring now to the hook that is shown in Figure 5 of that patent? A. Yes, that is correct, Figure 5.

31, I have never seen.
32, I have a 32 hook here, Figure 8, in stock.
No. 33 I have never seen.
No. 34 I have seen.
Q. You refer to which figure? A. Figure 42.

THE COURT: Figure 42?

MR. CONNER: Yes, sir. It is on one of the [320] subsequent pages of the drawings.

MR. KALISH: Would you mind speaking just a little louder?

THE WITNESS: Figure 42 of the R. French, 34.

MR. KALISH: Any other figure? Just 42?

THE WITNESS: That's the one, yes.

Figure 19 is the same hook, I believe, only probably a replica of this Figure 8, is it not?

By MR. CONNER:

Q. You have seen a hook similar to Figure 19?
A. That's right; I have that presently in stock.

MR. KALISH: What is that last?

THE WITNESS: Figure 19.

MR. CONNER: He is talking about Plaintiff's Exhibit No. 34, Figure 19 of that exhibit.

THE WITNESS: I have that in stock.

MR. KALISH: You have it in stock, you say?

THE WITNESS: Yes, sir.

MR. KALISH: Did you say you have Figure 42 in stock also?

MR. CONNER: Figure 42 was a previous exhibit.

THE WITNESS: Figure 42 I actually have in stock also.

MR. KALISH: You have both in stock?

THE WITNESS: Yes, sir.

[321] No. 35 I have never seen.
No. 36 I have never seen.

MR. KALISH: You have seen?

THE WITNESS: I have not.

MR. KALISH: None of those on 36?

THE WITNESS: 38 I have never seen.

MR. KALISH: How about 37?

THE WITNESS: No, sir; I have never seen 37.

MR. KALISH: Or 38?

THE WITNESS: No.

MR. KALISH: How about 39?

THE WITNESS: There is no 39 here.

By MR. CONNER:

Q. Here is a 38.
A. I mentioned that I haven't seen that.

* * * * * * *

By MR. CONNER:

[322] Q. Let me ask whether or not those hooks which you just said you have seen on the market before, have anything in common. A. In one case only, according to the hooks that are in that book, in one case only; it is a so-called hook of the type that you would sew on to the heading of a drape. The others are tape-insertion hooks.

Q. In other to clarify that answer I think it might be better to show the witness those that he referred to individually. I believe the witness said that he has seen a hook of the type shown in Figure 5 of the Vance patent, Exhibit 30. What type is that? A. That is a sew-on hook.

Q. I believe the witness said that he saw a hook corresponding to the showing of Figure 8 of the French patent,

Exhibit 32. What type hook is that? [323] A. That is an insert hook into a tape.

Q. I ask the witness whether or not that hook, such as shown in Figure 8 which he has previously seen, is a pleater-hook. A. No, sir.

Q. I believe the witness said that he has previously seen a hook, such as shown in Figure 42 of the French patent, Exhibit 34. I ask the witness whether that is a pleater-hook. A. No, sir.

Q. I believe the witness also said that he saw or has seen a hook of the type shown in Figure 19 of that same French patent, Exhibit 34. I ask him whether or not that is a pleater-hook. A. No, sir.

* * * * * * *

CROSS-EXAMINATION BY MR. KALISH:

[325] Q. What did you do while you were going to this night school? A. I was working.

Q. Where? A. With the T. Eaton Company.

Q. In what capacity? A. Oh, I was just an ordinary clerk at the time.

Q. In what department? A. Well, a number of departments.

Q. By the way, how old are you now? [326] A. I am fifty-one.

Q. You say you were with the Eaton Company from 1920 to 1949; is that right? A. That is correct, sir.

Q. How old were you when you started with the Eaton Company? A. Around fifteen.

Q. And you worked there continuously from '20 to '49? A. Right; from the time I left school.

Q. And when in '49 did you leave them. A. March.

Q. When did you enter this other business in which you are now engaged? A. Well, we actually opened our store in May of 1949. . . .

* * * * * * *

[327] Q. You said you made a trip—I am not sure that I just recall your testimony, but my recollection is

that you made a trip, a vacation trip perhaps. A. That's right.

* * * * * * *

Q. What month was that in in 1949? A. Oh, I guess around August or September.

Q. Shortly after you opened your own business? A. That is correct.

Q. And by the way, when you made this summer trip, where were you then located? A. I was in Toronto.

[328] Q. And in which Eaton store was it where you found this pleater? A. This was in Pembroke, Ontario.

Q. How far from Toronto is that? A. Oh, probably 150 miles.

Q. Is it an Eaton store which you had visited before on another occasion? A. No, I had never been in the store before.

* * * * * * *

Q. Do you know of your own knowledge when this Pembroke store of Eaton's first started carrying this four-fingered pleater? A. No, sir, I do not.

Q. For all you know they might have been carrying it a year before you hit upon it there, or two or three or five years before? [329] A. In all probability, yes.

Q. And you also testified that from about 1930 to 1943, a period of some 13 years, I guess, you were in the drapery department of Eaton's Halifax store? A. That is correct.

Q. Prior to 1930, what were you doing? A. From '26 to '30 I was in the drapery department at the Eaton store in Toronto.

Q. In what capacity? A. Just a clerk.

Q. You mean waiting on customers? A. That's right.

Q. And then from '43 to '49 you were in the Toronoto store of Eaton, is that right? A. That's right; correct.

Q. Again in the drapery department, or not? A. In the curtain department.

Q. And the curtain department and drapery department are separate? A. They are separate, yes.

Q. By the way, these pleaters of which we have been speaking, are those pleaters used in curtains as distinguished from draperies? A. Yes, sir, they are.

Q. Have you ever installed them in curtains? [330] A. Yes, sir, very definitely.

* * * * * * *

Q. . . . you have been sitting in this court room throughout the trial? A. That is correct, sir.

Q. Do you know Mrs. Loudon, the patentee? A. I have met her on one occasion, sir, yes.

[331] Q. How long ago? A. Four or five years ago, I guess, the last time I saw her.

Q. And in what connection? Buying or selling? A. No. Actually they had a demonstration of their pleater-tape in the Canadian National Exhibition.

* * * * * * *

Q. You spent some time reviewing these matters with Miss Hyndman in Mr. Conner's office in New York, before you came to Washington? A. Yes, sir.

Q. And when did you go to New York? A. Well, we arrived on Tuesday.

Q. Tuesday morning? A. Tuesday—Wednesday morning, I believe, was it not?

MR. CONNER: Tuesday morning you arrived in New York.

By MR. KALISH:

Q. You mean Tuesday morning, the day preceding the trial in this case, or the week earlier? [332] A. No; the day preceding.

Q. The day preceding the trial in this case? A. Yes.

Q. Prior to that time had you been interviewed by anyone in connection with these pleaters and this controversy? A. No, sir.

Q. Who asked you to come here?

* * * * * * *

MR. CONNER: You mean Mr. Loudon, don't you?

THE WITNESS: Mr. Loudon, yes. I was asked by Mr. Loudon if I would come down and represent them, and I said I would, and that's all I know about it.

Q. And is Mr. Loudon Mrs. Loudon's husband? A. That is correct.

* * * * * * *

[333] Q. Have you ever taken any courses, in school I mean, in mechanics or mechanical drawing? A. No.

Q. How often have you been in the United States? A. Oh, I guess about 10 or 12 times.

Q. Other than your present trip? A. That's right, sir.

Q. And to what cities have you traveled—did you say ten? A. Ten or twelve, in that vicinity.

Q. That is over your entire career? A. Yes. Of course we have been here on pleasure trips besides business trips. I have been in other places on pleasure, but only on business in New York.

Q. And how many such trips have you made to New York [334] for business? A. I would say in the vicinity of around ten trips.

Q. And that was for Eaton? A. No, for myself.

Q. Not for Eaton? A. No—on one or two occasions, yes.

Q. Did you ever go to New York for Eaton? A. Yes, on one occasion.

Q. When? What year, I mean? A. About '35, I guess it was.

Q. About '35? A. Yes.

Q. And what was the next time that you went to New York, which I understand was on your own behalf? A. Well, that would be around 1950, in that vicinity.

Q. What? A. Around 1950.

Q. Wouldn't you remember what your first trip was to New York in your own behalf, on your own business? A. Well, it was around 1950.

Q. And from 1950 to the present time, which is approximately four or five years, you made—. A. About ten trips.

[335] Q. I show you the pleater, which you said was defendant's pleater, and which is marked Defendant's Exhibit No. 5, and I understand that you also sell in your store, alongside of this pleater, other four-fingered metallic pleaters, is that true? A. That is correct, sir.

Q. I think you said one made by Eastern and one by Judd. A. That is correct.

Q. When you testified that you thought, or you estimated, that you probably sold 25,000 pleaters a year, was that the lump sum of all the three kinds? A. I would say the combined lot, yes.

Q. Of course, you have records, do you not, showing your purchases from Judd, from Eastern, and from Loudon? A. That's right.

Q. Would those purchase records show more accurately than your recollection how much you purchased from each? A. Oh, yes.

Q. They would also show what proportion of that 25,000 were purchased from Loudon and what proportion from Eastern [336] and what proportion from Judd? A. Of course.

Q. When you spoke of the 25,000 which you say you purchased, you estimated you purchased, and where, did that include all pleater-hooks of Loudon and all pleater-hooks of Judd and all pleater-hooks of Eastern such as you purchased from them? A. Yes, sir.

Q. Not just one kind but whatever you purchased? A. Approximately all of them.

Q. I show you a device, which I ask to have marked for identification as Plaintiff's Exhibit No. 52, and ask you if you recognize that as one of Mrs. Loudon's hooks. A. Yes, it is.

Specimen of Loudon two-finger pleater was marked for identification as Plaintiff's Exhibit No. 52.

Q. And you sell that also? A. Yes, sir.

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[337] Loudon's four-finger (copper-plated) pleater was marked for identification as Plaintiff's Exhibit No. 53.

[338] Q. I show you another hook, which I ask to have marked as Plaintiff's Exhibit No. 54 for identification, and ask if that is one of the hooks you handle, except that it is nickel-plated instead of copper-plated. A. That is correct, sir.

Loudon's one-finger (nickel-plated) pleater was marked for identification as Plaintiff's Exhibit No. 54.

Q. Do you recognize Plaintiff's Exhibits 44 and 45 as defendant's printed literature accompanying her products? A. Yes, I do.

Q. And referring now to the pleaters, or the hooks, I should say, which are marked for identification as Plaintiff's Exhibits 52, 53 and 54, those are the three Loudon-made hooks that you now handle, except they are all nickel-plated? A. That's right.

Q. And when you saw these same hooks in the Eaton store in Pembroke, they were the same, but copper-plated? A. That is correct.

Q. All these hooks of course are included among this 25,000 that you mentioned, is that right? [339] A. That is right, sir.

Q. Isn't it a fact that a pleater, or a pleater-hook as you might choose to call it, is not merely something that makes pinch-pleats but it may also make box-pleats and other pleats as well? A. A four-pronged pleater-hook will make box-pleats as well as pinch-pleats.

Q. And all that is required to make box-pleats is to leave a couple of the fingers unemployed? A. Well, actually that's why they have the two prongs—

Q. Just answer the question for a moment. Isn't that true? A. Yes, that is true.

Q. As an alternative to using the four-finger hook leaving two fingers unemployed or unused, you can use the two-finger hook of the Loudon patent as well? A. That is true.

Q. Like that exemplified by Plaintiff's Exhibit No. 52? A. That is correct.

Q. So that a two-finger hook is also a pleater? A. A single pleater, yes.

Q. Well, it is a pleater? A. That is right.

Q. It does put a pleat into the fabric? A. That is correct.

[340] Q. And it is intended to be slipped into the pockets the ~~name~~ same as the four-finger pleaters; right? A. That's right.

Q. And I suppose you could have a six-finger pleater and make a pinch-pleat of a greater number of folds, is that right? A. Yes.

Q. Now, this matter of the number of folds in a pleat is a matter of artistic taste and style, isn't it? A. I would say so.

* * * * * * *

The pleaters heretofore marked for identification were received in evidence as Plaintiff's Exhibits 52, 53, and 54.

Q. In addition to working in Eaton's Toronto and Halifax stores, did you work in any other store of Eaton? A. Yes. I worked in the College Street store of the [341] Eaton Company, Limited.

Q. Is that still in Toronto? A. In Toronto, yes.

Q. Did you work in any other city than Toronto and Halifax for Eaton? A. For a short period of a few weeks in North Bay.

Q. How far is that from Toronto? A. 250 miles.

Q. What year was that? A. That's a long ways back.

Q. Approximately what year? A. 1927.

Q. And at that time you were not in the drapery department? A. Oh, yes, of course.

Q. In 1927. A. Yes, sir.

Q. In addition to these services for Eaton, did you visit, while you were in Eaton's employ, other stores of Eaton, other than the Halifax and College Street, and so on? A. Oh, yes.

Q. In what cities? A. Well, there are a great many cities that actually comprise the T. Eaton Company, and there are certainly an awful lot that I have been through.

[342] Q. And there's a lot that you haven't been through? A. There's a lot that I haven't been through, that's true.

Q. And you couldn't now recall which you had and which you hadn't? A. To a certain extent.

Q. Let's put it this way: You would recall a few that you have not been through? A. Sure I would.

Q. And you could certainly name a few you had been through for sure? A. Yes.

Q. And then there's an in-between zone which you wouldn't want to be sure of right now? A. That's right.

Q. Sir, of course, in the Dominion of Canada there are many stores that handle drapery other than Eaton's? A. Oh, yes; very definitely.

Q. And would it be fair to say that the preponderant majority of them you have never been in? A. Oh, yes, that's right.

Q. While that tape is being searched for, to save time, you will agree, I am sure, that the position of the hook in relation to the vertical height of the finger, whether it is high up or middle way down or any other place, is largely a [343] matter of how you want to hang the curtain, namely, whether you want to hang it close to the ceiling or not, or within a box or not? A. That's right.

Q. And whether you hang the curtain close to the ceiling or not close to the ceiling is again a matter of taste and style? A. Yes, that's right.

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A specimen of defendant's "No-So" tape sewn to top of drapery material was received in evidence as Defendant's Exhibit No. 6.

[344] Q. Are you familiar with the slip-on heading hooks of Plaintiff's Exhibit No. 43, which I show you? A. Yes, I am familiar with them.

* * * * * * *

Q. You have it in the store? A. That's right.

Q. You mean you have it on sale? A. That's correct.

* * * * * * *

Q. I have here as Plaintiff's Exhibit No. 43-A an

extra one of these hooks like that of Plaintiff's Exhibit No. 43, but outside the bag, and I am going to insert right before you this hook into the tape of Defendant's Exhibit No. 6, and ask you to state whether the fingers of that hook will enter pockets of the tape. A. They will.

Q. And will you state whether I have inserted them in [345] immediately adjacent pockets or not? A. Yes, you have.

Q. In immediately adjacent pockets? A. Yes.

Q. Will you also state whether they are also insertable in pockets which are not immediately adjacent, namely, skipping one pocket? A. That is correct.

Q. And what is this? You get a bigger pleat, don't you? A. Yes, you get a bigger pleat.

Q. And if you left two pockets empty and put it in the third pocket you would get still a bigger pleat, is that right? A. That's right, a box-pleat.

Q. Do you know of any reason why the device of Plaintiff's Exhibit 43-A, or Plaintiff's Exhibit 43, could not be used to make a box-pleat? A. No. It can be used.

Q. And if you made a box pleat—and I will just skip one, too, but I will let you pick your own pocket, if you will—I have skipped one pocket—and I put that device of Plaintiff's Exhibit 43 in there, and then in the same tape I put the device of Loudon, which is here, the two-finger device of Loudon, which is Plaintiff's Exhibit 52, [346] and would you tell me if there is any practical difference between the one pleat and the other? A. No difference.

Q. And is there any reason why the device of Plaintiff's Exhibit 43-A wouldn't function and operate just as well as the Loudon two-fingered device of Plaintiff's Exhibit 52?

MR. CONNER: I am going to object unless he limits it to a box-pleat.

MR. KALISH: Well, of course.

MR. CONNER: And to the particular type of pleat that he is demonstrating.

MR. KALISH: Well, of course; that's all the question is addressed to.

THE COURT: Then you may answer it.

A. Exactly the same function.

Q. And certainly the device of Plaintiff's Exhibit 43-A is not any less practical than the Loudon device? A. No.

Q. Now, coming to the four-fingered hook of Loudon, which is Defendant's Exhibit No. 5, and the two-fingered hook of Loudon, which is Plaintiff's Exhibit No. 52, what is the [347] difference between the two? A. Well, one will make a single pleat and the other will make a triple pleat.

Q. What is the difference in structure? A. Two arms against four.

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[348] Q. If you, as a practical mechanic, had this two-fingered hook of Plaintiff's Exhibit 54, and you wanted to make a pinch-pleat instead of a box-pleat, and you wanted to make a pleater for it, would you know how to extend the wire on this to make an extra finger on each side? A. No, I would not.

Q. You would not? A. No.

Q. You wouldn't know how to raise that wire up and down again? A. I am not a mechanic.

Q. I show you Plaintiff's Exhibit No. 31-A, which is [349] a pleater, and the tape of Plaintiff's Exhibit No. 1, and I insert the fingers of this pleater into adjoining pockets of the tape, and ask you whether I have so inserted the fingers of the pleater into the pockets of the tape. A. Yes, sir, you have.

Q. And will you tell me whether that pleats the tape? A. Yes, it does.

Q. And what kind of a pleat does it form? A. A pinch-pleat.

Q. Will you tell me whether that functions any differently from the pleater of the Loudon device, which is Defendant's Exhibit No. 5? A. No difference.

Q. And would the pleater of Plaintiff's Exhibit 31-A,

applied to a pocketed tape on drapery be any less practical than the Loudon four-fingered pleater? A. No, sir.

* * * * * * *

[350] MR. CONNER: Did you examine this hook outside of the tape?

THE WITNESS: No, I did not.

MR. CONNER: Will you please do so?

THE WITNESS: Yes.

MR. KALISH: I think this has gone far afield for an interruption of redirect examination.

THE COURT: We will save time by doing it now, than trying to find it later on.

THE WITNESS: I retract my statement.

MR. CONNER: Why do you retract your statement?

THE WITNESS: Because that pin-on hook there would penetrate the top of the drape.

By MR. KALISH:

Q. Well, now, I am going to apply that pleater of Plaintiff's Exhibit 31-A to the pockets of the tape of Plaintiff's Exhibit No. 49, formerly Defendant's Exhibit No. 1, and I will ask you to step over here to where this traverse rod is.

(The witness left the witness stand and went to the easel.)

Q. (Continuing) I will hang it on the traverse rod, and I will ask you to pull down on it as much as you think [351] would be the normal wear and tear that this thing would get beneath the pleater, and then look at it and see if the fingers of the pleater have penetrated the drapery. A. I don't think it could.

Q. You don't think it could? A. Not at the present time, but over a period of time it would.

Q. Let me ask you this for a moment. Do you think that anybody would pull this drape any harder than I am pulling it now? A. I don't suppose they would.

Q. And if this won't cause it to penetrate, what else would cause it to penetrate? A. That's right.

Q. You punched it through with your hand? A. Right.

Q. And you didn't punch it through the drapery; you punched it through the sidewall of the finger-receiving pocket, isn't that true? A. Correct.

Q. Let me ask you another thing here. Have you ever seen these little pins that come when you buy a fresh shirt [352] from a haberdashery, by which your sleeves and so on are pinned together? A. Yes.

Q. And they generally put a nice little ball on the user's end of the pin, isn't that right? A. That is right.

* * * * * * *

Q. At any rate, Mr. Davis, you are familiar, of course, with the common expedient of making a thing round, if you don't have to have it sharp. You have seen that lots of times? A. That's right.

Q. Do you think it would be a far reach of ingenuity to make the ends of the fingers blunt if you didn't want them pointed? A. It is a matter of opinion, I imagine.

Q. Do you think it would be well within your skill to make a thing blunt if you didn't want it pointed? A. Certainly.

Q. I now show you Plaintiff's Exhibit's No. 34-A and ask you to look at it closely.

A. (The witness complies with counsel's request.)

Q. I will ask you to watch while I thread the fingers [353] of this device into the pockets of the tape of Plaintiff's Exhibit No. 49, and tell me whether I have or have not inserted this device into four consecutive pockets of the tape. Have I or have I not inserted the device into four consecutive pockets of the tape? A. You have.

Q. And tell me whether, having so inserted it, there was created a pinch-~~heat~~ pleat. A. Correct.

Q. And three outwardly extending folds? A. Correct.

Q. With the tops flaring outwardly? A. Yes.

Q. And do you know any reason why this couldn't be hung on a traverse rod, with enough of its pockets in the other parts of the tape, and the device hung up and used? A. Certainly it could.

Q. Now, is there any difference in function and mode of operation of the device as I have demonstrated it to you here a minute ago, of Plaintiff's Exhibit 34-A in the drapery of Plaintiff's Exhibit No. 49, and the function of the Loudon pleater, Defendant's Exhibit 5, in the same drape?

* * * * * * *

[354] Q. Yes. Insert, if you will, the fingers, as I have done, into four consecutive pockets. I am going to ask you to insert the longer finger first and then the shorter fingers. A. (The witness complies with counsel's request.)

Q. Now, will you tell me if there is any substantial difference in function or mode of operation of these two devices, Defendant's Exhibit 5 and Plaintiff's Exhibit No. 34-A, inserted into the pleater-tape of Plaintiff's Exhibit No. 49? A. They both serve the same purpose but the "No-So" pleater is a more practical form of pinch-pleater.

Q. How does it differ in practicality? A. The only difference is as regards the short prongs of the other hooks.

Q. In other words, the only difference you say is that the two outer fingers of the device of Plaintiff's Exhibit 34-A [355] are shorter than the two inner ones? A. That is correct.

Q. But other than that, they function alike? A. That is right.

Q. And would it be within your skill, if you please, either yourself or to instruct someone else, to lengthen these fingers by leaving that much wire on before it is cut off? A. Yes.

Q. That would be within your competence, wouldn't it? A. Yes, I imagine so.

Q. And do you think that would have been within your competence in the summer of 1949? A. No, sir.

Q. You think not? A. No, sir.

Q. Why not? A. Because I didn't think of it.

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[363] By MR. KALISH:

Q. Look at the Carr patent, which is Plaintiff's Exhibit 24. Do you see in the Figures 3 and 4 a pinch-pleat, a two-loop pinch-pleat? A. Yes, I imagine that would be called a pinch-pleat.

Q. You recognize that he has also a pleater-tape with pockets? A. Yes.

Q. And you recognize that he threads the hook-carrying stem through one pocket and the two side fingers through adjacent pockets? [364] A. I am not too familiar with this tape or the type tape it is just on paper here, and I wouldn't want to definitely say.

Q. I will ask you to take Plaintiff's Exhibit No. 24-A and thread this thing through as I am threading it through, and I will let you do it yourself, if you wish, so that you may not be influenced by the way that I do it. You just watched me do it, didn't you? A. Yes.

Q. And will you tell me whether what I have done fairly represents what is shown in Figures 3 and 4 of the Carr patent? A. Yes, I would say it is approximately the same.

Q. And would you say it produced the pinch-pleat? A. Yes, I would.

Q. And do you know of any reason why this device will not be as practical as the Loudon device, except of course it only has two loops in the pleat instead of three, if it is put beneath a box valance concealing the hook? A. No, sir, a box valance, fine.

Q. And if it is not in the box valance you would want the hook lower? A. Yes.

Q. Now, whether you use a box valance is a matter of style and taste, isn't it? A. Yes.

[365] Q. Are they popular today? A. No.

Q. They are out of style? A. That's right.

Q. Depending on your likes, but for the mass of people they don't want box valances today? A. That is correct.

Q. I will show you the device of Plaintiff's Exhibit 36-A and ask you whether that will form a box-pleat if slipped into the pockets of a pleater-tape. A. Yes, it will.

Q. And the size will depend on where you slip the fingers in, is that right? A. That is correct.

Q. Is there any reason you know of why it wouldn't be a perfectly practical device for a box-pleat? A. It is practical, yes.

Q. Do you know of any reason why it wouldn't be just as practical as the two-finger pleater of Loudon? A. I would imagine it would be much the same.

Q. Just as practical? A. Yes.

Q. I now show you a device of Plaintiff's Exhibit 23-A, and will thread that into three pockets of the tape of Plaintiff's Exhibit 49, and ask you whether that forms a pinch-[366] pleat. A. Yes, sir, it does.

Q. And do you know any reason why that device wouldn't be perfectly practical to form a two-loop pinch-pleat in a piece of drapery if it is used beneath a valance box? A. Not beneath the valance box.

Q. I mean in a valance box. A. That is right.

Q. Would it be entirely practical? A. Yes.

Q. And so far as that is concerned, it is just as practical as the Loudon pleater except that it is intended to be used in a box valance? A. Except for the size of the hook, which wouldn't be practical.

Q. Well, you would want to make the hook smaller? A. That's right.

Q. To fit into the modern traverse rod hanger? A. Yes.

Q. But if you wanted to put it on the old-fashioned rod, then this would be just as practical, but whether it is the old-fashioned rod or the present up-to-date traverse rod, is a matter of current style? A. That is right.

Q. It is a matter of choice? A. That is right.

Q. Now, I show you the device of Plaintiff's Exhibit 26-A, and insert the two upstanding fingers in the pockets of the tape, but not in adjoining pockets, but pockets spaced two or three apart. Will you tell me whether that forms a box-pleat? A. Yes, it does.

Q. And do you know of any reason why that wouldn't be a perfectly adequate device for forming box-pleats and hanging it on a curtain rod? A. Yes, it would.

Q. And do you know of any reason why it wouldn't be just as practical to form box-pleats as the two-finger pleater of Loudon? A. It would not be as strong.

Q. It wouldn't be quite as strong? A. No, it wouldn't be quite as strong.

Q. You mean because it only has a single piece of wire? A. Actually that would be partly the reason, yes.

Q. And you think having the inverted "U" makes it stronger? A. Yes, I do.

Q. Then except for that it still forms a perfectly adequately box-pleat? [368] A. That is correct.

Q. And you recognize, of course, that the hanging hook is about half way of the length of the upstanding fingers? A. That is right.

Q. You have looked at the Loudon patent, haven't you? A. Yes, I have.

Q. I now call your attention to the (Kirsh) pleater of Defendant's Exhibit 7-A. You will admit that this pleater is not in full accordance with the picture shown in Figure 2 of the Loudon patent? A. Yes, that is not the same.

Q. It is not the same? A. No.

Q. And as a matter of fact, the pleater, Figure 2 of the Loudon patent, is one that can be spread apart like an accordion, isn't that true? A. Yes.

Q. And that is not true of this device of Defendant's Exhibit 7-A? A. From all I see, no.

Q. And it is true that this is not made of a single length of wire? A. That I couldn't say, I haven't fully examined it.

Q. Could you tell by looking at it? A. Yes, if I could look at it. [369] (After examining:) It is a single length of wire with the exception of the hook.

Q. And the hook is made of this? A. That's right.

Q. And the hook is not formed but bent up and down the finger wire? A. It is welded to the device.

Q. Is this pleater of which you said it had inverted U-shaped fingers? A. Yes, sir.

Q. Now, will you explain to the Court how you see a U in any one of the four fingers? What is your concept of the U? A. Either side of the wire up and over the top is in a U-shape.

Q. What you mean is that the outline of the finger, if you run a pencil around it against paper will draw a U? A. I didn't say that. I said the actual edge of that hook, around the top of that hook and down the other side forms a U.

Q. In other words, the edge of the edge forms a U? A. That's right.

Q. And wouldn't that be true pretty nearly of every piece of wire that stands up? A. Not necessarily.

[370] Q. But of every straight piece that stands up, it would have a U, depending only on how wide the U was? That's right.

Q. And then you see no difference between the letter "I", which would be a straight rod standing up, but of one-sixteenth of an inch, and a U with a one-sixteenth inch gap between the legs, but considering the profile of the I as the U; isn't that about it? I mean, isn't that your concept of the U here? A. Yes, that's right.

Q. You are considering the profile of the I, as making the U? A. Yes.

Q. Tell me who gave you that idea for the first time, of considering the profile of the I as being an inverted U? A. Nobody.

Q. You mean you didn't discuss this in New York in Mr. Conner's office? A. In respect to the fact—

Q. I said, did you discuss this in Mr. Conner's office? A. Certainly.

Q. You did? A. Certainly.

Q. And you think that originated in your mind and not in Mr. Conner's mind? [371] A. I still say, sir—

Q. I say, did that originate in your mind or in Mr. Conner's mind? A. In Mr. Conner's mind.

Q. Mr. Conner's mind, surely. And you gave your assent to what he said? A. Yes, formed my own judgment, sir.

Q. Well, you agreed with him after he suggested it to you? A. I did not agree. He asked me a question and I answered him.

Q. But it is he who gave you the idea? A. He asked me if that formed the letter "U" and I said yes.

Q. Before he told you to think of the outline? Before he told you to think of the profile? A. No.

Q. In other words, he first called your attention to the idea of considering the profile, isn't that true, and then asked you if that's a U? Isn't that a fact? A. No, sir.

Q. Well, what is the fact? A. It forms a letter "U".

Q. I am not asking that; but isn't it a fact that it was Mr. Conner who first suggested to you, for you to consider [372] the profile of that upstanding finger as being an inverted U? A. Yes, sir.

Q. And then you agreed with him that it was an inverted U? A. Yes, sir, that is correct.

Q. And this matter of the pockets of plaintiff's tape converging slightly at the top, that also was discussed for the first time in Mr. Conner's office in New York on Monday or Tuesday, isn't that true? A. Pertaining to what, sir?

Q. Pertaining to the story you told here on the witness stand. A. About this tape you are talking about?

Q. Yes. I am talking about the story you gave here that the upper ends of the pockets of the tape of plaintiff's tape converge inwardly slightly; that idea was suggested to you for the first time by Mr. Conner in New York, isn't that true? A. Certainly.

Q. And that idea that by unraveling the weft threads of one of the tubes the thread would ultimately find its way to the center, also was suggested to you by Mr. Conner for the first time in New York on Tuesday? A. Yes, sir.

Q. What experience have you had with textiles, meaning [373] woven fabrics specifically? A. None whatsoever in the field of manufacture.

Q. Do you know whether or not this thing to which you called the Court's attention is merely an inescapable incident of weaving two-ply fabrics on a loom? A. Well, I wouldn't know.

* * * * * * *

Q. Have you ever sold any of plaintiff's pleaters with defendant's tape? A. No, sir.

Q. Have you ever seen them used together? A. No, sir, I have not.

Q. Then of your own knowledge you can't tell whether they have ever been used together? A. No, sir, I cannot.

Q. Referring now to this Eastern pleater of Plaintiff's [374] Exhibit 8-A, you will agree that that is unlike the pleater shown in Figure 2 of the Loudon patent? A. It is unlike, you say?

Q. Yes. It is substantially different? A. Yes, it is, definitely.

Q. And that is true also of the Judd pleater which was marked here as Plaintiff's Exhibit 9-A? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. So that each of the several pleaters, which has been marked for identification through your testimony, other than the Loudon pleater, is substantially unlike that shown in Figure 2 of the Loudon patent? A. They all form a pinch-pleat, sir.

Q. That's right, but they form a pinch-pleat no different than these many other devices which I showed to you and which I threaded through the pockets of the tape; isn't that true? A. That is right.

MR. KALISH: That is all. I renew my objection to the introduction in evidence, to receiving in evidence, of these pleaters of the other manufacturers, because this witness has now shown that they are substantially unlike the pleater shown in the Loudon patent-in-suit, and therefore their [375] commercial success or failure can reflect nothing cogent upon the merits of the Loudon pleater.

THE COURT: Objection overruled. Now, that relates to what exhibits?

MR. CONNER: 7-A, 7-B, 8-A, 8-B, 9-A, and 9-B, I believe.

THE COURT: All right. Defendant's Exhibits 7-A, 7-B, 8-A, 8-B, 9-A, and 9-B, will be received in evidence.

Defendant's Exhibits 7-A, 7-B, 8-A, 8-B, 9-A, and 9-B, were received in evidence.

By MR. KALISH:

Q. This other thought that you presented to the Court here, that the fingers of these various pleaters will go through the top of the open-ended pockets of plaintiff's tape, that's another thought which Mr. Conner suggested to you last Tuesday, isn't it? A. Yes.

Q. And this further thought that the fingers bear against one side of the pocket as they are pressed within the pocket, that's another idea suggested to you by Mr. Conner? A. Through examination, yes.

Q. But it was his suggestion that led you to believe so? [376] A. Correct.

REDIRECT EXAMINATION By MR. CONNER:

Q. In your sale of drapery trimmings, to what extent has the pleater-hook, of the type involved in this suit, replaced or displaced from the market the pin-on hooks and the sew-on hooks which you testified were in use prior to the introduction of the pleater-hooks?

MR. KALISH: This witness is not qualified. He testified he has been in but a small fraction of the stores. His experience is limited to Canada. He knows nothing about the United States, and we are concerned only about commercial success in the United States.

MR. CONNER: I am asking about his own store only.

MR. KALISH: His own store is not relevant to this. It is only a small pinpoint on the map.

THE COURT: You may answer.

A. Approximately 90 per cent of the business today is done on the inserted pinch-pleat type hooks.

By MR. CONNER:

Q. In your business do representatives of various manufacturers of drapery hardware regularly call on you? A. Yes, regularly.

Q. Have you been called on by representatives of [377] manufacturers, other than the manufacturers whose hardward you now sell? A. Yes, sir.

Q. Would you say that there are quite a number of the other representatives who have called on you? A. Yes.

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[378] Q. Consider this pleater-hook then, Plaintiff's Exhibit 23-A; is it as easy to install in the tape as the pleater-hook such as Defendant's Exhibit 5, that is the present London hook? A. No, sir.

Q. How many pleats does it form? A. It forms two pleats.

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[379] Q. Plaintiff's Exhibit 24-A has a supporting hook portion, does it not? A. Yes.

Q. And that supporting hook portion has a depending portion that passes through a pocket in the tape, does it not? A. Yes, it does.

Q. Will you please attempt to remove that from the tape? A. I wouldn't know how.

Q. Would you say that that is easy to remove? A. Definitely not.

* * * * * * *

Q. I hand the witness a copy of this hook, Plaintiff's Exhibit 26-A, and ask him to compare it with the hook shown in the Jantzen patent, Plaintiff's Exhibit 26, and state whether or not the fingers of that hook have been bent so that they lie parallel to each other. A. Yes, they have.

[380] Q. The hook shown in Figure 2 of the Jantzen patent has two upstanding fingers, does it not? A. Yes, it does.

Q. Are they parallel to each other, as shown in Figure 2? A. Yes, they are.

Q. I say as shown in Figure 2, are they parallel to each other? A. Yes.

* * * * * * *

Q. Do the fingers diverge outwardly in a V-shape? A. Yes, they do.

Q. I hand the witness this hook, Plaintiff's Exhibit 34-A, and ask him to insert it himself into the tape of this drapery, Plaintiff's Exhibit 49.

* * * * * * *

[381] Q. Will you state whether or not that device was as easy to insert as the four-pronged pleater-hook of the type exemplified by Defendant's Exhibit No. 5? A. Much the same idea.

Q. I notice that the witness has inserted the two center fingers in the same pocket. A. That's right.

Q. Is that the way you would normally insert that? A. I have never seen this one before; therefore, I wouldn't like to say that.

Q. Will you try to force that, if you will, and get those fingers into separate pockets?

MR. KALISH: The witness has done that on a prior occasion so I don't think that is necessary.

A. I don't recall whether I put those separately.

* * * * * * *

By MR. CONNER:

Q. Is it easy to insert those fingers in separate pockets of the tape? That is, as easy as it would be to insert a hook such as exemplified by Defendant's No. 5? A. No, sir, not quite as easy.

Q. Is ease of installation a factor in rendering a [382] pleater-hook commercially salable and practical, in your opinion? A. Yes, it is.

Q. Is a box valance expensive? A. Yes, it is.

* * * * * * *

[383] Defendant's Exhibits 1, 2 and 5, heretofore marked for identification, were received in evidence.

* * * * * * *

[386] The five specimens of plaintiff's "Nip-Tite" pleaters were marked and received in evidence as Plaintiff's Exhibits 49-A, 49-B, 49-C, 49-D, and 49-E.

* * * * * * *

[759]

INFORMAL MEMORANDUM

(Filed June 23, 1955)

The plaintiff, Consolidated Trimming Corporation, brings this action seeking a declaratory judgment that defendant's United States Patent Number 2,672,194 is not infringed by any of plaintiff's products and that said patent is invalid, void, and unenforceable. The defendant asks that plaintiff's petition be dismissed.

The burden of proof rests upon the plaintiff which means that before the plaintiff is entitled to any relief it must establish and prove by the preponderance of the evidence at least one of the propositions as so stated. The court finds that plaintiff has failed to overcome the presumption that defendant's patent is valid and so has failed to carry the burden of proof upon that issue. The court likewise finds that plaintiff has failed to carry the burden of proving that defendant's patent is not infringed by plaintiff's products.

No other issues are presented which require the action of the court; accordingly counsel for defendant will submit for settlement findings of fact, conclusions of law and a judgment form dismissing plaintiff's complaint.

F. DICKINSON LETTS, *Judge*

[763]

NOTICE

(Served June 29, 1955 and filed June 30, 1955)

PLEASE TAKE NOTICE that at 9:30 A.M. on Thursday, June 30, 1955, the undersigned will present to this Court (Hon. F. Dickinson Letts presiding) the annexed proposed Findings of Fact and Conclusions of Law and the annexed form of Judgment.

June 28, 1955

Attorney for defendant *Counsel for defendant*

To: *Counsel for defendant.*
Attorney for defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed June 30, 1955)

[760]

This action having come on for trial before the Court without a jury on March 23 to March 25, 1955, and briefs having thereafter been filed by the parties, the Court, upon consideration of all of the evidence and arguments of counsel, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This is an action under 28 U. S. C. §2201 in which plaintiff seeks a declaration that U. S. Letters Patent No. 2,672,194 issued to defendant on March 16, 1954 and covering drapery pleater hooks and pleater tape is invalid, unenforceable and has not been infringed by plaintiff. Defendant has filed no counterclaim, but merely asks that the Complaint be dismissed.

2. Plaintiff is a New York Corporation engaged in the manufacture and sale of drapery trimmings including drapery pleater hooks and pleater tape.

3. Defendant is a citizen and resident of Canada.

4. Defendant is the owner of the patent in suit.

[761] 5. Defendant was served by registered mail pursuant to an order of the Court under the authority of 35 U. S. C. §293.

6. The patent in suit contains five claims, the first four of which cover drapery pleater hooks *per se* and the fifth of which covers the combination of drapery pleater hooks and pleater tape.

7. Plaintiff has made and sold at least two types of pleater hooks: the so-called "Bestpleat" hook (as exemplified by Plaintiff's Exhibits 8, 18 and 47A) and the so-called "Nip-Tite" hook (as exemplified by Plaintiff's Exhibits 9, 19, 47B and 49A through 49E).

8. Plaintiff has failed to carry its burden of proving that the patent in suit is not infringed by these pleater hooks.

9. Plaintiff has made and sold and is now making and selling pleater tape as exemplified by Plaintiff's Exhibit 1.

10. Plaintiff has failed to carry its burden of proving that the patent in suit is not infringed by the combination of this pleater tape with plaintiff's pleater hooks.

11. Plaintiff has failed to carry its burden of proving that the patent in suit is invalid.

12. Plaintiff has failed to carry its burden of proving that the patent in suit is unenforceable against the plaintiff.

Conclusions of Law

1. This Court has jurisdiction of the subject matter of this action, as an action arising under the patent laws [762] of the United States, U. S. C. Title 35.

2. This Court has jurisdiction over the patent under 35 U. S. C. §293, but does not have jurisdiction over the person of the defendant.

3. Plaintiff has the burden of proving its allegations that the patent in suit is invalid, that the patent in suit is unenforceable, and that the patent in suit is not infringed by plaintiff's products.

4. The patent is presumed to be valid and enforceable unless otherwise proven.

5. Plaintiff is not entitled to any of the relief which it seeks.

6. The Complaint should be dismissed.

/s/ F. DICKINSON LETTS
U. S. District Judge

[764]

JUDGMENT

(Filed June 30, 1955)

This action having come on for trial before the Court without a jury on March 23 to March 25, 1955, and the Court having, after due consideration of all of the evidence and arguments of counsel, made its findings of fact and conclusions of law, it is hereby ORDERED, ADJUDGED AND DECREED:

1. The Complaint is dismissed ~~with prejudice.~~ W. C. C.

2. The costs of this action shall be taxed against the plaintiff.

/s/ F. DICKINSON LETTS
U. S. District Judge

[779]

NOTICE OF APPEAL

(Filed July 14, 1955)

Plaintiff hereby gives notice of its appeal to the United States Court of Appeals for the District of Columbia from the judgment of the District Court entered in the above-entitled action on June 30, 1955.

Attorney for plaintiff

PLAINTIFF'S EXHIBIT 20

Excerpts from the file-contents of Loudon's application Serial No. 630,877 filed in 1945 and abandoned in 1947.

1945 Contents

of file of Loudon's abandoned application Serial No. 630,877.

			File-wrapper pages
	Informal application	October 25, 1945	1-9
	Letter, advising applicant that her informal application can not be given a filing date or placed among applications for examination	November 8, 1945	10
1	Application papers (Serial No. 630,877)	November 26, 1945	11-20
2	Print of drawing	December 12, 1945	21
3	Rejection	April 17, 1947	22
4	Revocation and Power of Attorney	April 17, 1952	23
5	Notices of Revocation and Acceptance	April 22, 1952	24
6	Amendment "A"	October 13, 1952	25-28
7	Petition to Revive and Affidavit	October 13, 1952	29-46
8	Examiner's Answer	October 27, 1952	47
9	Amendment "B"	November 6, 1952	48-50
10	Examiner's Answer	November 18, 1952	51
11	Letter	November 20, 1952	52-53
12	Commissioner's Decision	December 4, 1952	54-55

Informal specification filed October 25, 1945.

[2]* **NO-SO.**

Means for hanging Curtains and Draperies

I have provided a device, whereby draperies may be hung, eliminating the long, tedious procedure of sewing on the old style drapery hook.

(Sheet No. 1) Referring to drawing, it will be seen that I have developed this idea in two parts, namely:

THE DRAPE HOOK AND FACING FOR DRAPE HEADING

known as "Header." This facing or header can be made from various materials, preferably Factory Cotton.

(a) The material is folded over and stitched, leaving open channels to allow the Drapery Hook to be inserted ready for hanging.

(b) The Drape Hook sketched is made from soft steel wire, in a manner providing four separate upright prongs, thereby t[illegible]ing the place of four of the old-style, one-prong hooks. These prongs when inserted into channels are for the purpose of holding heading upright, and centre prong turned down to provide hook to insert in ring on curtain pole.

(Sheet No. 2) This sketch shows Drapery Hook inserted, each prong into separate channel, alternately, drawing material into place forming three distinct pleats.

/s/ FLORENCE F. LOUDON

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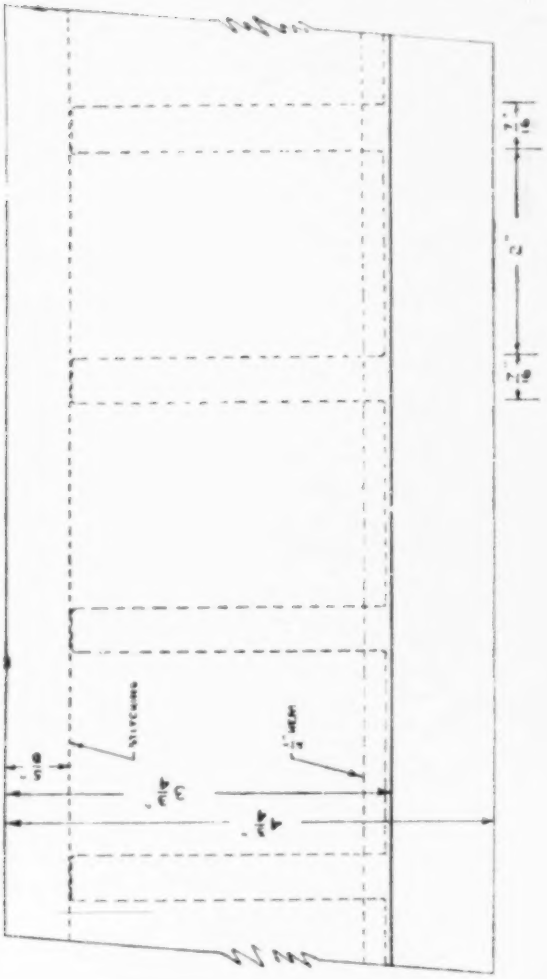
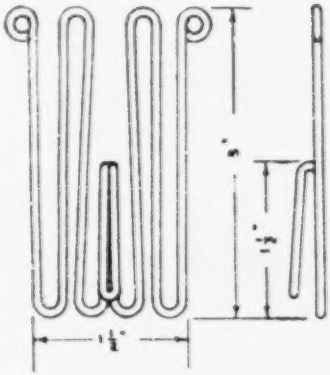
* these bracketed numbers, which have been inserted throughout the excerpts from the file-wrapper of defendant's abandoned application (Plaintiff's Exhibit 20) reproduced on pages 141 to 154 of the Joint Appendix and throughout the excerpts from the file-wrapper (Plaintiff's Exhibit 21) of defendant's patent-in-suit, which excerpts are reproduced on pages 154 to 186 of the Joint Appendix, refer to the pagination of these file-wrappers as such pagination appears in the original exhibits.

(6) Drawing, Sheet No. 1 filed October 25, 1945

in the file of Loudon's abandoned application





DRAPE HOOK

MAT. ~~(RE-USE)~~ SOFT STEEL WIRE

SECTION OF REINFORCEMENT FOR DRAPE

SHOWING SLOTS FOR DRAPE HOOK

(ILLUSTRATION SHOWING DRAPE HOOK INSERTED IN $\frac{7}{16}$" SLOTS ON SHEET 2)

MAT FACTORY COTTON - $8\frac{3}{4}$" STRIP x WIDTH OF DRAPE

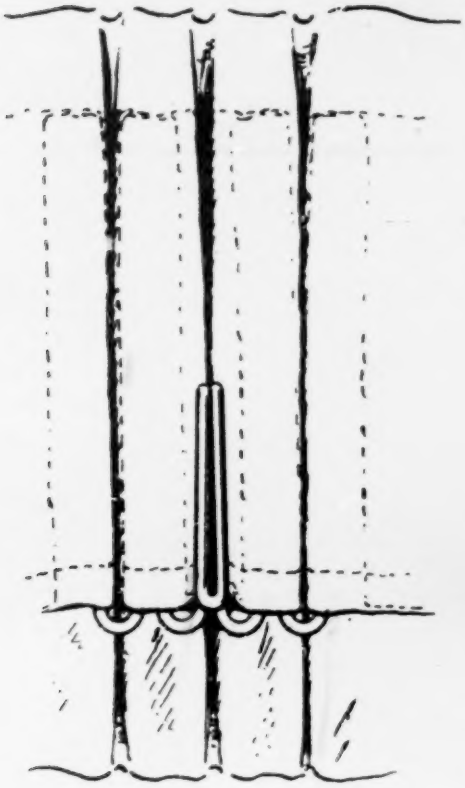
SHEET 1

DRAWN BY B. MEDLAND

DATE OCT 22, 1945

Florence D. Loudon

ILLUSTRATION SHOWING DRAPE HOOK INSERTED IN POSITION



SHEET 2

DRAWN BY B MEDLAND
DATE: OCT 22, 1945

Formal specification filed November 26, 1945: in the file of Loudon's abandoned application.

[14] TO ALL WHOM IT MAY CONCERN:

Be it known that I, FLORENCE F. LOUDON, a subject of the King of Great Britain, and resident of the City of Toronto, County of York, Province of Ontario, Canada, have invented certain new and useful improvements in:

MEANS FOR SUPPORTING CURTAINS AND DRAPES of which the following is a specification.

[15] Curtains and drapes are usually supported from rings slidable on a rod by means of special hook members which are either pinned or sewn to the back of the upper end of the curtain or drape. The original attachment of these hook members is a troublesome task, and further, as these hook members have to be removed when the curtains or drapes have to be cleaned or laundered, and then replaced for re-hanging the curtain or drapes, it will be seen that the trouble is thus accentuated.

The object of my invention, therefore, is to devise an improved method of connecting the curtain or drapes to the hooks, which will avoid the use of the safety pin type of hook, and also avoid the sewing of other types of hooks to the curtains or drapes, but which will permit of the ready mounting of the curtain upon the ring-engaging hook members, and their quick separation of the curtains from these members when desired.

I attain my object by providing at the upper part of the curtain or drape a plurality of long narrow pockets closed at their tops, but open at the bottom, so that long vertical fingers on supporting hooks may project upwardly therein. These pockets may be formed in various ways, as hereinafter more specifically described and illustrated in the accompanying drawings in which:

Fig. 1 is a rear view of part of a curtain or drape supported from a pole;

Fig. 2 a section on the line 2-2 of Fig. 1;

Fig. 3 a rear view showing a modified form of curtain top;

Fig. 4 a section on the line 4-4 in Fig. 3;

[16] Fig. 5 a year view of a curtain supporting strip;

Fig. 6 a front view of a hook member;

Fig. 7 a side view of the same;

Fig. 8 a top edge view of part of a curtain with a modified form of hook member;

Fig. 9 a front view of the hook member;

Fig. 10 a side view of the same; and

Fig. 11 a cross section on the line 11-11 of Fig. 5.

In the drawings like characters of reference indicate corresponding parts in the different figures.

A indicates a curtain or drape, B the supporting rod or pole, C the rings which are slidable on the pole, and D the hook members which are attached to the curtain and hooked into the usual eyes C1 on the rings C.

An ordinary type of hook member D is shown in Figs. 6 and 7, which member is bent from an integral piece of wire to form first an upwardly directed leg 1, then bent downwardly to form a leg 2, then upwardly to form a long securing arm 3. The legs 1 and 2 form between them the hook which is engaged in the eye C^1 of the ring C, while the arm 3 has usually been stitched to the curtain, the arm being provided with a loop 4 at its upper end, and an intermediate bend 5 to help the stitching to maintain it in place.

[17] The leg 2 and arm 3 are provided with bends 6 which cooperate with the leg 1 to prevent accidental disengagement of the leg 1 from the eye C^1.

It will be apparent that when the curtain or drape is to be cleaned or laundered, the hook members must be removed, an dthen re-stitched in place when it is desired to again hang the curtain or drape.

To avoid this stitching of the hook members to the curtain, I provide the upper end of the curtain with a plurality of long narrow pockets 6, which may be formed in various ways. In cases where the curtain or drape

material is doubled over on itself to form a hem, the pockets may be formed as indicated in Fig. 1, by stitching the curtain as indicated by the dotted line 8. It will be noted that the bottom of the turned over part is stitched intermediate the pockets.

It will be apparent that if the curtain is lined, both the curtain material and lining may be turned over to form the hem, or if the curtain is lined, and it is desired to save curtain material, the lining only may be doubled back.

It will be apparent, as shown in Figs. 3 and 4, that these pockets may be formed by stitching narrow pieces of tape to the inside of the curtain, whether the latter is lined or unlined, the lower end of the tape being left without transverse stitching to provide the necessary entrance for the arm 3.

To assist the ordinary housewife who may desire to make her own curtain or drapes, I may provide a band or strip of material with the pockets formed therein, as shown in Fig. 5. This is made by doubling a piece of material [18] upon itself and stitching the two parts together in a manner to form the desired pockets. The edge of one part extends beyond the other, as indicated in Fig. 3. The desired length of material is cut from the strip, and is stitched to the back of the curtain upon the lines 9 and 10, the lower edge of the strip being preferably doubled back before attachment, to avoid showing a raw edge.

It will be seen that the supporting hooks D are readily inserted in the pockets to facilitate the hanging of the curtain, or removed from the pockets to facilitate the taking down of the curtain.

It is usual to pleat the upper end of the curtain with the pleats arranged in groups, usually three in number, as shown in Fig. 8. By combining the inverted pocket arrangement, as above described, and using the special hook member of Figs. 8 and 9, the pleats will be maintained in proper relationship to one another. The hook member, as shown in Fig. 9, is formed of an integral piece of wire, bent to form a plurality of U-shaped bends, connected at the top.

It will be noted that the outer legs 13 are of single material, while the intermediate legs 12 are of double thickness. The center leg is bent outwardly and downwardly to form the supporting hook which engages the ring eye.

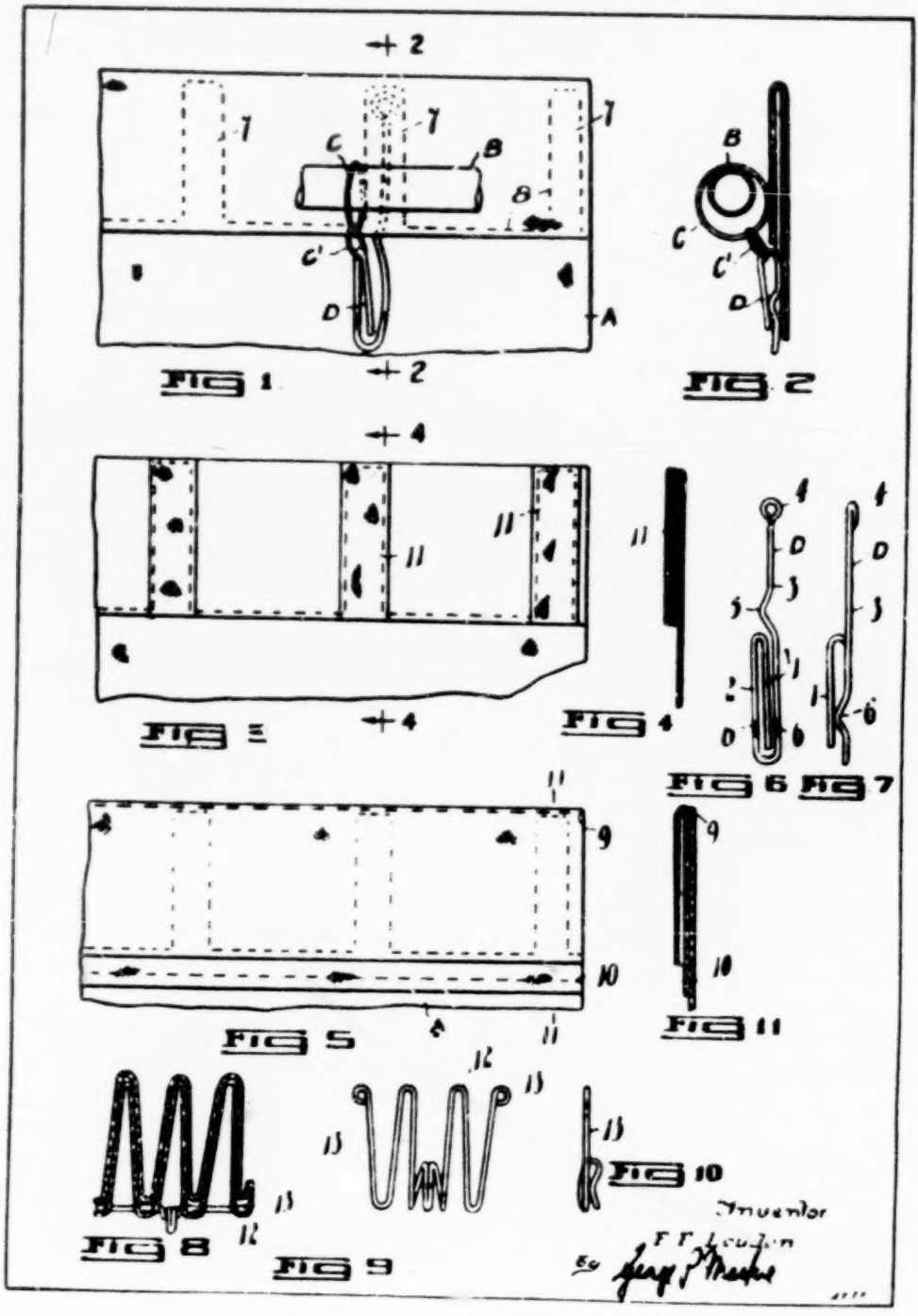
[19] WHAT I CLAIM AS MY INVENTION IS:

1. A curtain having a series of horizontally spaced vertical pockets formed on its face adjacent its upper end, said pockets being open at their lower end.

2. For use with a curtain, a securing strip adapted to be attached to the upper end of the curtain, said strip having a series of horizontally spaced vertical pockets formed therein, said pockets being open at their lower ends.

3. The combination of a curtain having a series of horizontally spaced vertical pockets formed on its face adjacent its upper end, said pockets being open at their lower end; and a plurality of supporting members each having an arm portion projecting into a pocket and a hook portion.

[21] Formal drawing filed November 26, 1945 in the file of Loudon's abandoned application. 630877



The Examiner's Official Action of April 17, 1947: in the file of Loudon's abandoned application.

[22] References made of record:

Strube	2,115,593	Apr. 26, 1938	160–348x390
Moss	1,714,885	May 28, 1929	160–387x "
Cowan	1,919,674	Nov. 6, 1934	" x "

Claims 1 and 3 are rejected on either Moss or Strube as the equivalent any variations being colorable.

Claim 2 is rejected on Moss or Strube in view of Cowan, there being no invention in making the top hem of the devices of Moss and Strube with a separate strip rather than with a folded over edge of the main fabric as Cowan does.

Claims 1-3 are rejected.

Examiner.

Amendment "A," filed October 13, 1952: in the file of Loudon's abandoned application.

[25] Honorable Commissioner of Patents

Sir:

A petition to revive the above application, which became technically abandoned, has been filed of even date herewith.

This amendment is presented responsive to Official Letter of April 17, 1947, and with the view to placing this application in condition for allowance.

Cancel all claims, without prejudice, and in lieu thereof insert new claims as follows:

4. For use with a drape having at its upper end a plurality of vertically extending horizontally spaced parallel tunnels or pockets closed at their upper ends and open at their lower ends, a pleater and supporting means having four upstanding pocket entering and engaging fingers of narrow width and having U-shaped and rounded upper ends and being disposed in a single plane, and a hook located between the two center fingers and directed rear-

wardly substantially at right angels to the plane of the fingers, said hook having the supporting portion thereof below the rounded upper ends of the fingers.

[26] 5. In supporting means for curtains and the like having a series of spaced apart downwardly opening narrow pockets or tunnels on the inner side adjacent to the upper hanging edge, said supporting means comprising a single length of wire-like material looped and brought together in its middle portion and forming a suspending hook portion having the bill thereof extending outwardly and downwardly, said single length of material being looped upwardly from the lower part of the hook and then being looped over and downwardly and looped outwardly and upwardly and then looped outwardly and downwardly in the provision of two substantially U-shaped and rounded ended pocket engaging fingers on each side of the hook with the arms and the U-shaped and the rounded ended portions lying in a single plane substantially at right angles to the extent of the bill of the suspending hook portion.

REMARKS

It is believed that this amendment is fully responsive to the official letter, that the claims are allowable and that this amendment places the application in condition for final allowance.

The claims as now presented are substantially claims 11 and 13, allowed in application No. 135,570, filed December 29, 1949, by the same applicant.

Claims are drawn to the structure illustrated in Figures 8 and 9 and 10, and it will be noted that in these showings there are four pocket entering fingers, [27] two on each side of the hook, the inner fingers being U-shaped and all fingers having rounded upper ends. These changes from the claims allowed in application Serial No. 135,570 have been made to properly set forth the portions 12 and 13, and it is thought that the subject matter of the two claims now presented in this application is substantially the same as allowed claims 11 and 13 of application Serial No. 135,570, as all fingers are substantially U-shaped and

the only difference is that the portions 13 do not extend quite so far down. Furthermore, it is not believed that any citation even remotely hints at the structure called for in the two claims as here introduced.

These claims clearly and fully and definitely set forth patentable subject matter over anything shown in or suggested by or even remotely hinted at in the cited patents to Strube and to Moss and to Cowan, as no one of these citations even remotely suggests a supporting and hanging and pleating device for curtains and the like having a series of horizontally spaced downwardly opening parallel pockets on the inner side adjacent to the upper hanging edge, with the supporting device comprising a single length of wire-like material having a hook portion and having a series of vertically disposed rounded-ended non-perforating fingers connected to and extending outwardly from opposite sides of the hook portion, with a pair of fingers on each side of the hook [28] and all of said fingers being arranged in substantially parallel relationship to one another and being disposed in a single plane substantially at right angles to the hook portion with the rounded ends of the finger portions disposed upwardly.

It is believed that all of the claims now presented in this application clearly and fully and definitely set forth patentable subject matter over any and all patents contained in the art, as these claims follow substantially the claims allowed in application Serial No. 135,570.

The Examiner has very carefully searched the prior art with the subject matter of claims 4 and 5 in mind, in acting upon copending application No. 135,570, and it is therefore urged that there is no showing any place in the art of structure such as called for in these claims.

It is submitted that the two claims herein presented are allowable, and that this application can be passed to final allowance, upon the granting of the petition to revive.

Favorable action upon this presentation is asked.

Respectfully submitted,

Attorney

Supplemental Amendment "B", filed November 7, 1952 in the file of Loudon's abandoned application.

[48] Hon. Commissioner of Patents

Sir:

This application is now abandoned and awaiting action upon a Petition to Revive, filed October 13, 1952.

On the same date as the Petition, attorney filed an amendment including two new claims substantially following claims allowed in applicant's now pending application Serial No. 135,570, for Supporting Means for Curtains and the Like.

By the "Examiner's Answer" dated October 27, 1952, the Examiner staetd that the amendment was responsive but did not appear to put the application in condition for allowance; and, it is assumed this may have been because some slight changes have been entered in the claims which were allowed in the pending application.

[49] To place the application in condition for allowance, it is asked that this supplemental amendment be entered and considered in conjunction with the amendment of October 13, 1952, and that action be taken thereon so that the Examiner's Answer can be changed to state that the amendment does place the application in condition for allowance.

Please cancel claims 4 and 5 as presented in the amendment of October 13, 1952, and in lieu thereof insert a new claim as follows:

6. For use with a drape having at its upper end a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and supporting means having four inverted U-shaped pocket engaging fingers of narrow width and having rounded upper ends and disposed in a single plane and a hook located between the two center fingers and directed substantially at right angles to the

plane of the fingers, said hook having the supporting portion thereof below the rounded upper ends of the fingers.

REMARKS

The newly presented claim 6 is a word for word copy of claim 11 which was allowed in the presently pending application Serial No. 135,570 filed December 29, 1949. This claim is believed to be fully supported by [50] the showing in Figures 5, 8, 9, 10 and 11.

Favorable action upon this presentation is asked.

Respectfully submitted,

Attorney for Applicant

Decision of Assistant Commissioner of Patents (dated December 4, 1952) on Petition to Revive in the file of Loudon's abandoned application.

[54] This is a petition to revive this application which became abandoned for failure to respond within the statutory period to the Office action of April 17, 1947.

At the outset it should be noted that where the delay in acting upon an application is as long as four years, the showing should be such as to leave no reasonable doubt of the fact that it was unavoidable for the inventor to proceed sooner. The rights of the public must be taken into consideration. Ex parte Gironcoli, 120 O. G. 2753.

* * * * * * *

After the Examiner's Answer was mailed in this case applicant presented an amendment cancelling all of the claims and substituting a single claim which has been allowed in another application of the applicant. The Examiner reported in his Supplemental Answer mailed November 18, 1952 that this amendment did not put this application in [55] condition for allowance. The attorney responded with a letter requesting "correction or amplification of the contradictory statements by the Examiner."

However, because a claim may be allowable in one application, it does not necesarily follow that the claim is allowable in a different application. The Examiner reports orally that the proposed claim 6 is not allowable in this application because it does not read on the elected species and because it is not supported by the disclosure of the instant application. Of course, in no event is applicant entitled to the benefit of the filing date of the instant application as to disclosure which appears only in a later filed application.

Under the circumstances of this case and upon the showing presented in applicant's affidavit, the mere fact that the applicant relied upon patent attorneys who proved to be unreliable is deemed insufficient to show that the long delay here involved was unavoidable within the meaning of 35 U. S. C. 37 (R. S. 4894).

The petition is denied.

Assistant Commissioner

PLAINTIFF'S EXHIBIT 21

Excerpts from the contents of the file of Loudon's application Serial No. 135,570 filed December 29, 1949

on which the patent-in-suit (Plaintiff's Exhibit 6, at pages 189 to 193 of Volume 2 of Appendix) was issued on March 16, 1954.

1949 Contents

of file of Loudon's application Serial No. 135,570 on which the patent-in-suit was issued.

			File-wrapper pages
1	Application papers	December 29, 1949	1-13
2	Print of drawing	January 6, 1950	14
3	Rejection and Election	April 27, 1950	15-16
4	Amendment "A"	October 9, 1950	17-19
5	Rejection	January 5, 1951	20-21
6	Amendment "B"	February 23, 1951	22-23

			File-wrapper pages
7	Rejection	March 9, 1951	24
8	Revocation and Appointment of Attorney	June 20, 1951	25
9	Notices of Revocation and Acceptance	June 29, 1951	26
10	Amendment "C"	August 29, 1951	27-39
11	Rejection	January 10, 1952	40-42
12	Amendment "D"	June 25, 1952	43-50
13	Rejection	July 7, 1952	51-53
14	Amendment "E"	August 15, 1952	54-61
15	Final Rejection	September 8, 1952	62-64
16	Amendment "F" (Not Entered)	October 3, 1952	65-72
17	Letter	October 14, 1952	73
18	Appeal No. 34987	October 20, 1952	74-77
19	Brief (3)	December 18, 1952	78-92
20	Examiner's Answer	January 22, 1953	93-95
21	Notice of Hearing	October 5, 1953	96
22	Decision by Board (affirming in part)	October 27, 1953	97-101
23	Amendment "G"	November 18, 1953	102
24	List of References	January 18, 1954	103

(The specification of this application is omitted here, because it is the same as the specification of the patent-in-suit as it appears in Columns 1 & 2 and in lines 1-71 of Column 3 thereof, on pages 191 & 192 of Volume 2 of Appendix.)

The original Claims as filed on December 29, 1949, in the file of the patent-in-suit.

[8] WHAT I CLAIM IS:

*1. In supporting means for curtains and the like, a plurality of horizontally spaced narrow vertical pockets supported on one face of a curtain adjacent the upper end thereof, said pockets being closed at their upper end and

* This claim was cancelled on October 9, 1950, by Amendment "A".

open at their lower end, and hook members each comprising pocket engaging means and a hook portion made integral therewith and adapted to engage with a curtain rod.

*2. In supporting means for curtains and the like, a plurality of horizontally spaced narrow vertical pockets supported on one face of the curtain adjacent the upper end thereof, said pockets being closed at their upper end and open at their lower end, and hook members each comprising a finger portion and a hook portoion integral therewith, the said finger portion adapted to engage in said pockets and the hook portion adapted to engage a curtain rod.

†3. In supporting means for curtains and the like, the combination with a curtain of a pocket strip fixedly attached to the back face of said curtain along the top thereof and extending the width of the curtain, said pocket strip comprising spaced apart vertical pockets closed at their upper ends and open at their lower ends, a hook member comprising a hook portion adapted to engage with a curtain rod and a plurality of pocket engaging means integral with said hook portion, said pocket engaging means of said hook member adapted, upon engagement with said pockets, to form pleats in said curtain.

[9] †4. In supporting means for curtains and the like, the combination of a curtain with a pocket strip fixedly attached to said curtain on the back face thereof and extending substantially the entire width of same, said pocket strip comprising spaced apart vertical pockets having closed upper ends and open lower ends, a hook member comprising a hook portion adapted to engage with a curtain rod and four finger portions adapted to be inserted in four of said pockets, said hook portion and said four fingers being integrally fashioned, and the said four fingers of the said hook member adapted to form three pleats in said curtain upon their insertion in four of said pockets.

†5. In supporting means for curtains and the like, a

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* This claim was cancelled on October 9, 1950, by Amendment "A".

† This claim was cancelled on February 23, 1951, by Amendment "B".

pocket strip secured to the back of said curtain at the top portion thereof and extending the width of the curtain, said pocket strip comprising a separate strip of flexible material folded over itself, the front fold of which terminates short of the bottom edge of the back fold, spaced apart vertical pockets formed in said pocket strip, said pockets each comprising stitched sections of the front and back fold of said pocket strip, the lower and extending portion of said back fold of the pocket strip being stitched to said curtain, the upper edge of said pocket strip being stitched to said curtain to thus secure the same thereto, a hook member comprising a length of suitable material bent to form four inverted U-shaped fingers, a hook portion formed centrally of said four fingers and being integral with the center ones of same and adapted to engage with a curtain rod, the said four fingers adapted to engage in four of said pockets in said pocket strip and to form three pleats in the said curtain, said four fingers adapted to freely engage in the said pockets and to be removable therefrom.

[10] * In supporting means for curtains and the like, a curtain being folded down on itself along its entire width and being stitched along the bottom edge of the fold, spaced apart vertical pockets secured to the folded portion of said curtain, each of said pockets comprising a tape extending vertically, upward from the bottom of the fold and being stitched thereto along its sides and top to form a closed top and open bottom, a hook member comprising a single inverted U-shaped finger and a hook portion extending outward therefrom and being integral therewith, said single finger adapted to be inserted in one of said pockets to be freely contained therein, and said hook portion of said hook member adapted to engage with a curtain ring on a curtain rod.

(The sheet of drawing forming a part of the application for the patent-in-suit has been omitted here, be-

* This claim was cancelled on October 9, 1950, by Amendment "A".

cause it is the same as the sheet of the drawing forming a part of the patent-in-suit at page 189 of Volume 2 of Appendix.)

Examiner's Official Action (Paper No. 3) dated April 27, 1950: in the file of the patent-in-suit.

[15] This application has been examined.

References made of record:

Carr	834,188	Oct. 23, 1906	160–348	X
Charlton (Br.)	151,108	Sept. 23, 1920	160–389	
Knight (Br.)	24,522	A.D. 1904	160–348	

Claims 1 and 2 are rejected as drawn to an old and exhausted combination of a curtain and a curtain hook, shown to be old by each of the above cited patents. Each of the references show the same combination as called for by the claims.

Claims 1 and 2 are rejected as obviously fully met by Charlton or Knight. No structural distinction is set out therein.

The application contains claims specific to more than one species of the generic invention, namely, the species of Fig. 1 and Fig. 5, respectively. Since the generic claims stand rejected above, the applicant is required in accordance with Rule 146, as amended, 628 O.G. 606, and Order 3527: 520 O.G. 259, to make an election of one species.

Upon allowance of a generic claim, applicant will be entitled to consideration of claims to not more than four species in addition to the one elected species, provided all the claims to each of the additional species are written in dependent form or otherwise include all the limitations of the generic claims as provided by Rule 141, as amended: 628 O.G. 606.

Examiner

Amendment "A" (Paper No. 4) filed October 9, 1950 in the file of the patent-in-suit.

[17] The Commissioner of Patents,

Sir:

In response to Official Action dated April 27, 1950, please amend as follows:

Applicant wishes to advise that he has chosen Figure 1 to 4 inclusive as that form of the invention on which he will further prosecute this application.

In the claims:

Cancel claims 1, 2, and 6.

Claims 3, 4 and 5 remain in the application and I am adding new claims Number 7 and 8 as follows:

†7. In supporting means for curtains and the like, a hook unit comprising a plurality of engaging fingers, a hook portion integral with said plurality of engaging fingers, said hook portion extending outward at right angles from the center portion of said engaging fingers and then extending downward parallel therewith.

†8. In supporting means for curtains and the like, a hook unit comprising a plurality of pocket engaging fingers, and a hook portion centrally located with respect to said plurality of pocket engaging fingers and being integral therewith, said hook portion extending outward at right angles from the center fingers of said pocket engaging fingers and then extending parallel therewith providing a space therebetween, each of said [18] pocket engaging fingers being of an inverted U-shaped formation of narrow width and having rounded upper ends, the outermost of said pocket engaging fingers at each end of said hook unit each terminating with an outer leg slightly longer than the rest of the unit and extending below the bottom of said pocket engaging fingers and said hook portion therefore, and eyes formed on the lower end of each of said outer legs of said outermost pocket engaging fingers, said pocket engaging fingers of said hook unit being adapted to support

† This claim was cancelled on February 23, 1951, by Amendment "B".

a curtain thereon in a pleated formation, and said hook portion of said hook unit being adapted to engage a curtain rod for substantially supporting the curtain.

* * * * * * *

Examiner's Official Action (Paper No. 5) dated January 5, 1951 in file of patent-in-suit.

[20] Responsive to amendment filed October 9, 1950.

Added references:

Fleming	1,090,040	Mar. 10, 1914	24–73C
Brewington	1,143,100	June 15, 1915	24–86C
Peck	2,294,607	Sept. 1, 1942	24–84C

Claims 3, 4 and 5 are rejected as drawn to an old and unpatentable combination of a curtain and a curtain hook unit, shown to be old by patents to Carr or Charlton. Each of these references shows the same combination as called for by the claims.

To substitute in this combination any other curtain supporting means for that claimed would not involve invention. The improvement, if any, in the curtain supporting means does not provide a new combination. In re Avery, 610 O.G. 261.

If invention is to be predicated on the curtain hook unit, it should be claimed per se.

Claim 7 is rejected as structurally readable on Peck and Brewington.

Claim 8 is rejected as unpatentable over Peck taken with Fleming. Provision of Fleming's eyes 11 at the ends of Peck's longer legs 5 instead of their generally equivalent ends 5′ would involve choice rather than invention, as also extension of hook 10 for a substantial distance parallel to [21] the fingers as in Fleming. Both Peck's and Fleming's finger and hook portions appear substantially as adapted to support curtain elements as applicant's structure. Particular use of old structure is patentably immaterial.

All the claims are rejected.

Examiner

Amendment "B" (Paper No. 6) filed February 23, 1951 in file of patent-in-suit.

[22] TO THE COMMISSIONER OF PATENTS,

Sir:

In response to Official Action dated January 5, 1951, please amend as follows:

Cancel the claims and add the following:

*9. In a supporting means for curtains, a hook unit comprising a pair of center fingers and a pair of outer fingers, each of the said fingers consisting of a pair of legs joined together at one end thereof, a hook integral with one leg of each of the center fingers which are bent to continue as the back of the hook and extending approximately half the length of said fingers, then outwardly and downwardly to form said hook, the bottom end of said hook being approximately level with the bottom of said fingers.

REMARKS

The claim submitted herewith has been drawn up on the specific construction of the hook unit, and applicant believes that it avoids any conflict with the references of record.

The suspension hook of Carr, No. 34,188, does not appear to conflict with the applicant's supporting means or hook unit as now claimed, the Carr patent describes and illustrates a hook that is considered quite different to the present case, especially with respect to the particular construction and formation of the hook portion of the unit.

[23] The same remarks are generally applicable to the British patents. The Charlton patent shows a separate ring member connected to a finger, the ring being engageable with the curtain rod, while the Knight patent, like that of Carr's, illustrates a differently constructed and formed hook to that of the applicant's invention, as now claimed in the new claim submitted herewith.

In the added references, Fleming, No. 1,090,040, does

* This claim was cancelled on August 29, 1951, by Amendment "C".

not describe or illustrate a hook as now specifically claimed, this clip of Fleming's would not appear to conflict with the applicant's curtain hook unit as now claimed.

The patent to Peck, 2,294,607, describes a shoe or boot hanger, which appears to be of two pieces of wire, the vertical hook apparently being welded to the horizontally extending loops, and this in itself is entirely different to the present case, in which the hook and the fingers are made integral with one another, the hook being a continuation of the center legs of the center fingers.

None of the cited references describe or show a hook portion extending from the bottom of fingers and being both vertically central and laterally central with respect to the fingers, as is the case with applicant's hook, and this feature of particular formation and construction of the hook is believed to avoid conflict with the state of the art as cited.

The application is accordingly submitted herewith for further consideration.

Attorney for Applicant

Examiner's Official Action (Paper No. 7) of March 1, 1951 in file of patent-in-suit.

[24] Responsive to the amendment filed February 23, 1951:

Added reference:

French	2,252,070	Aug. 12, 1941	24-84-C

Claim 9 is rejected as indefinite in "bent to continue" in line 6 and inapt in use of "level" in line 9.

Said claim is further rejected as unpatentable over the newly discovered reference French, on Fig. 42 of which it reads substantially. To make the curved outer portion of each outer finger as a straight leg and like the center fingers twice the length of the central integral hook and to bend or shorten the hook to extend no lower than the bottoms of the fingers appears to involve choice and design rather than invention over French.

If desired, this rejection may be considered final.

Examiner

Amendment "C" (Paper No. 8) filed August 29, 1951 in file of patent-in-suit.

[27] Hon. Commissioner of Patents

Sir:

This amendment is presented responsive to Official Letter of March 6, 1951, and following oral interviews with the Examiners.

Page 4 of the specification, in the last line erase "fashioned" and insert—*fashioned*—.

Upon consideration of this application, it is thought the claim does not present the invention in the manner intended and desired by applicant, and it is asked that the claim be canceled, without prejudice, and that new claims be inserted as follows:

* 10. For use with a drape having at its upper end a plurality of vertically extending horizontally spaced parallel tunnels ~~or loops~~ closed at their upper ends and open at their lower ends, a pleater and hanger device insertable upwardly into said tunnels through their [28] open lower ends, said device having an outwardly projecting drape hanger hook and four *co-planar*† closely and horizontally spaced upwardly projecting *non-perforating*† elongated vertical pleating fingers having blunted upper ends, all four of said fingers being of substantially the same length to thus extend substantially the full length of said tunnels and the upper ends projecting well above the supporting part of the hook and being spaced two on each side of the hook.

#1 ~~11.~~ For use with a drape having at its upper end a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and supporting means having four inverted U-shaped pocket engaging fingers of narrow width and having rounded upper ends and disposed in a

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* This claim was cancelled on October 3, 1952 by Amendment "F."

† Words in italics were inserted on August 15, 1952, by Amendment "E."

This claim was allowed on January 10, 1952, by the Official Action which is "Paper No. 11."

single plane and a hook located between the two center fingers and directed substantially at right angles to the plane of the fingers, said hook having the supporting portion thereof below the rounded upper ends of the fingers.

‡2 ~~12.~~ In supporting *and hanging*† means for curtains and the like having a series of *horizontally*† spaced apart downwardly opening narrow *parallel pockets*† ~~pockets or tunnels~~ on the inner side adjacent to the upper hanging end, said supporting means comprising a single length of wire-like material having a hook portion and having a series of vertically disposed [29] U-shaped fingers connected to and extending outwardly from opposite sides of the hook portion, the said *non-perforating*† fingers being arranged in spaced substantially parallel relationship to one another and being disposed in a single plane substantially at right angles to the hook portions with the loops of the U-shaped portions disposed upwardly.

#3 ~~13.~~ In supporting means for curtains and the like having a series of spaced apart downwardly opening narrow pockets or tunnels on the inner side adjacent to the upper hanging edge, said supporting means comprising a single length of wire-like material looped and brought together in its middle portion and forming a suspending hook portion having the bill thereof extending outwardly and downwardly, said single length of material being looped upwardly from the lower part of the hook and then being looped over and downwardly and looped outwardly and upwardly and then looped outwardly and downwardly in the provision of two substantially U-shaped pocket engaging fingers on each side of the hook with the arms of the U-shaped portions lying in a single plane substantially at right angles to the extent of the bill of the suspending hook portion.

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† Words in italics were inserted on August 15, 1952, by Amendment "E."

This claim was allowed on January 10, 1952, by the Official Action which is "Paper No. 11."

‡ This claim was allowed on September 8, 1952, by the Official Action which is "Paper No. 15."

‡4 ~~14~~. In supporting *and hanging and pleating device*† ~~means~~ for curtains and the like having a series of *horizontally*† spaced apart downwardly opening narrow *parallel pockets*† ~~pockets or tunnels~~ on the inner side adjacent to the [30] upper hanging end, said supporting *device*† ~~means~~ comprising a single length of wire-like material doubled in its middle portion and brought together and formed to provide a suspending hook portion with the bill of the hook portion extending outwardly *and rearwardly*† and downwardly, said length of material extending on opposite sides of the lower part of the suspending hook portion in spaced apart upwardly extending lengths turned over and then returned downwardly providing *four*† substantially U-shaped *non-perforating*† pocket engaging fingers *with two each*† on opposite sides of the hook with the arms of the U-shaped fingers lying in a single plane substantially at right angles to the extent of the hook portion and with the loops of the U-shaped pocket engaging fingers disposed upwardly.

* 15. In supporting means for curtains and the like having a series of spaced apart downwardly opening narrow pockets or tunnels on the inner side adjacent to the upper hanging end, said supporting means comprising a single length of wire-like material having an upright substantially U-shaped pocket engaging finger with the arms of the U-shape lying substantially in a single plane and with the loop disposed upwardly, and the lower end of one of the arms being extended upwardly and then over forwardly and outwardly substantially at right angles to the single plane and then over downwardly to provide a suspending hook portion with the suspending portion of the hook located substantially midway of the length of the finger.

[31] * 16. In supporting means for curtains and the like having a series of spaced apart downwardly opening

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* This claim was cancelled on June 25, 1952, by Amendment "D."

† Words in italics were inserted on August 15, 1952, by Amendment "E."

‡ This claim was allowed on September 8, 1952, by the Official Action which is "Paper No. 15."

narrow pockets or tunnels on the inner side adjacent to the upper hanging end, said supporting means comprising a single length of wire-like material providing a substantially U-shaped pocket engaging portion with the arms of the U-shape lying in a single plane and the loop of the U-shape disposed upwardly, said U-shaped portion having the lower end of one of the arms thereof extending upwardly and over forwardly and downwardly to provide a suspending hook portion, and said single length of material having the loop of the U-shaped portion extending upwardly above the hook and having the arm thereof away from the hook provided with an eye at its lower extremity.

*17. In supporting means for curtains and the like having a series of spaced downwardly opening narrow pockets on the inner side adjacent to the upper hanging end, said supporting means comprising a single length of wire-like material providing a substantially U-shaped pocket engaging portion with the arms of the U-shape spaced apart and lying in a single plane and the loop of the U-shape disposed upwardly, said U-shaped portion having the lower end of one of the arms thereof extending upwardly and then forwardly substantially at right angles to the single plane and then over forwardly and downwardly to provide a suspending hook portion, and [32] said single length of material having the loop of the U-shaped portion extending upwardly above the hook and having the arm thereof away from the hook extending downwardly beyond the hook and provided with an eye at its lower extremity lying in the single plane.

*18. A pleater strip for curtains and the like to be applied at the upper hanging edge of a curtain for reception of supporting hooks comprising an elongated strip of resilient material having one edge folded over forwardly and turned down flatwise and terminated short of the bottom edge of the backfold, and stitching securing the bottom edge of the front fold at spaced apart points with

* This claim was cancelled on June 25, 1952, by Amendment "D."

the stitching extending transversely of the strip and then longitudinally adjacent to the upper edge of the front fold and then again transversely to thus provide a series of spaced apart pockets along the length of the strip with the pockets closed at the top and open at the bottom of the front fold, and said strip being thus so constructed that longitudinal stitching can be applied along the upper edge and along the lower edge to secure said strip to a curtain and the like and to leave the pockets open at their lower ends.

Examiner's Official Action (Paper No. 11) dated January 10, 1952 in file of patent-in-suit.

[40] Responsive to amendment filed August 29, 1951. Additional art made of record:

Steiner	2,012,734	Aug. 27, 1935	160–348
Perlmutter	2,512,376	June 20, 1950	160–386
		(Filed May 7, 1948)	

Claims 10 to 18, inclusive, are now pending in the case.

Claims 10, 12, 14, 15, 16 and 17 are rejected as unpatentable over Carr, of record, in view of Steiner. The reference to Carr (Figures 1 to 4) discloses a pleater and hanging device comprising a single length of wire-like material having a central hook portion and two co-planar closely and horizontally spaced upwardly projecting elongated vertical pleating fingers having blunted upper ends, said fingers being of substantially the same length and adapted to be inserted upwardly into vertically extending horizontally spaced tunnels formed in a drapery. No invention is seen in modifying the Carr pleating device by providing additional vertical pleating fingers arranged in spaced parallel relationship to one another and in the same plane, particularly as taught by Steiner. Steiner also discloses the upper ends of the pleating fingers as projecting well above the supporting part of the hook and being spaced

two on each side of the hook. To apply the teachings [41] of Steiner to the Carr pleating device would involve only the carrying forward of an old idea and not involve invention. No patentable weight can be given to the limitation in claims 16 and 17 that one of the arms is provided with an "eye at its lower extremity". This appears to be an arbitrary structural limitation that produces no new or unusual result and not improving the structural organization of the supporting means.

Claims 15, 16 and 17 are further rejected as failing to define structure patentably differing from Perlmutter (Figure 4). No patentable significance can be given to the limitation in claims 16 and 17 that one of the arms is provided with an "eye at its lower extremity". This appears to be an arbitrary structural limitation that produces no new or unusual result and not improving the structural organization of the supporting means.

Claim 18 is rejected as finding its full equivalent of Charlton, of record. Charlton discloses a strip of material that may be folded over twice and stitched to the top of the curtain in substantially the same way as applicant does. Such a strip forming vertical pockets for reception of a supporting means performs the same function with the same results as applicant's.

Claim 18 is further rejected as being drawn to an invention other than elected by original presentation, since there was no claim originally presented to the pleater strip *per se*.

[42] Claims 10 to 17, drawn to the pleating device or supporting means, are distinct from claim 18 drawn to the pleating strip, since none of the claims to the supporting means rely upon nor include the specific details of the pleating strip set forth in claim 18. The subjects matter are mutually exclusive and each is capable of separate use, as evidenced by the art of record. The fields of invention have acquired a separate status in the art as shown by the cited exemplary art. For example, Steiner shows and claims a pleating device per se, and French

shows and claims a pleating strip per se. Ex parte Pearson, 1918 C. D. 36; 253 O. G. 259.

As at present advised, claims 11 and 13 appear allowable.

Examiner

Amendment "D" (Paper No. 12) filed June 25, 1952 in file of patent-in-suit.

[43] Hon. Commissioner of Patents

Sir:

This amendment is presented responsive to Official Letter of January 10, 1952.

Claim 10, line 7, erase "co-planer" and insert . . . *co-planar* . . .

Cancel claims 15, 16, 17, and 18.

Please add new claims as follows:

† 19. The combination of a curtain having a series of horizontally spaced *vertically extending parallel** ~~vertical~~ pockets on its inner face adjacent its upper end with said pockets open at their lower ends and closed at their upper ends, a *hanger and** pleater and supporting *device** ~~means~~ having *four blunt-ended non-penetrating** ~~a plurality of~~ spaced apart pocket engaging fingers of narrow width *and substantially equal length** having blunt upper ends disposed in a single plane and insertable in the lower open ends of the pockets and extending substantially to the closed upper ends thereof, and a supporting [44] hook carried substantially centrally of and extending rearwardly from the finger portion of the supporting means and having the supporting portion thereof substantially midway ~~on~~ the length of the fingers.

† 20. The combination of a curtain having a pleater strip applied transversely at the upper hanging edge of the curtain and said pleater strip being provided with a

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* Words in italics were inserted on August 15, 1952 by Amendment "E."

† This claim was cancelled on October 3, 1952, by Amendment "F."

plurality of *horizontally** spaced apart vertically extending *parallel** pockets open at their lower ends and closed at their upper ends, said pleater strip being stitched to the curtain at its upper and lower edges to leave said pockets substantially open and unobstructed, and a pleater and hanger device insertable upwardly into a plurality of said pockets through their open lower ends having *four** ~~a plurality of~~ co-planar closely and horizontally spaced upwardly projecting elongated *non-penetrating** vertical pleating fingers of substantially the same length and blunted at their upper ends, and a hangar hook disposed rearwardly and substantially midway of the length of said fingers.

†21. For use with a drape having at its upper edge a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and hanger device insertable upwardly into said tunnels through their open lower ends, said device having a drape hanging hook and four co-planar closely and horizontally spaced upwardly [45] projecting elongated vertical pleating fingers having blunted upper ends, all four of said fingers being of substantially the same length and extending the full lengths of said tunnels, and projecting well above the hook and being spaced two to each side of the hook, said fingers and hook being interconnected at their lower ends with all four fingers coming together at their lower ends closer than at their upper ends for pinching the pleats together at the lower ends of the tunnels, the hanger and pleater being constructed of wire and being formed and dimensioned to have sufficient resilience at the lower ends of the fingers to enable all fingers to be moved manually and easily towards or away from one another to facilitate insertion of the fingers into said tunnels and ot enable the intermediate fingers to be squeezed manually towards and closely adjacent the outer-

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* Words in italics were inserted on August 15, 1952 by Amendment "E."

† This claim was cancelled on October 3, 1952, by Amendment "F."

most fingers for a considerable distance along such fingers, the fingers having an inherent tendency to return to their original spacing after being manually squeezed together or spread apart.

Claim 21 has been copied from the patent to Bert P. Solomon No. 2,558,467, issued June 26, 1951, upon an application filed January 16, 1951, and is introduced for purposes of interference.

* * * * * * *

[47] Thus, specifically applying the language of the copied claim, it is submitted that applicant is entitled to make this claim for purposes of interference.

* * * * * * *

In the patent to Carr, a structure is shown where the hook a-b extends entirely above the arms c, which are intended to be inserted entirely through open loops d of the tape secured transversely on the curtain or drape. These arms c extend entirely through the loops and have their upper ends projecting above the top edge of the tape and turned over as hooks c' which are bent over and [48] are disposed as hooks to guard against the curtain being lifted from the portions c. There is no suggestion in this patent of a curtain having a plurality of elongated pockets on its inner side with the lower ends of the pockets open and the upper ends closed, and then a pleater and hanger structure provided with a supporting hook and having a plurality of elongated fingers spaced apart on opposite sides of the hook and extending upwardly above the hook and blunted at their upper ends so that the fingers can be inserted upwardly into the elongated pockets through the lower open ends thereof and the curtain or drape will be positively held against sagging at its upper edge by reason of the fact that the blunted upper ends of the fingers are presented within the closed tops of the pockets and the material is thus supported and stayed against any possibility of sagging. With the Carr device, the hook portion is presented above the upper edge of the curtain and there is no support at all for the upper edge of the curtain or the upper edge of the tape.

The Examiner has cited the patent to Steiner to be used with the patent to Carr; but, it is pointed out that this is a pin fixture in which the tines or prongs 11 and 12 must be inserted into material of the curtain, after the manner of pins, and there is nothing at all in this patent to prevent the upper edge of the curtain sagging.

* * * * * * *

[50] The fact that claim 21 was allowed in Solomon patent No. 2,558,467 appears to preclude the necessity for argument on patentability of this claim.

Respectfully submitted,

Attorney

Examiner's Official Action (Paper No. 13) dated July 7, 1952 in file of patent-in-suit.

[51] Responsive to amendment filed June 25, 1952.

Additional reference made of record:

Solomon	2,558,467	June 26, 1951 (Filed Jan. 16, 1951)	160–348

Claims 10 to 14, inclusive, and 19 to 21, inclusive, are now pending in the case.

Claims 10, 12, 14, 19 and 20 are rejected as unpatentable over Carr, in view of Steiner, for the reasons stated in the Office action dated Jan. 10, 1952. Applicant's arguments in support of the claims and against the rejection have been carefully considered. The grounds of rejection stated in the prior Office action are considered proper and are adhered to. No patentable weight can be given to the limitation that the parallel tunnels or loops are *closed* at their upper ends since this curtain construction is old in the art, as shown by Charlton, of record. Moreover, it is considered merely a matter of uninventive choice to construct the Carr curtain with closed loops at the top since the bottom ends of the prongs or hooked fingers c of Carr support the curtain in the same manner as in applicant's construction. Claims 10 and 20 attempt to differ by re-

citing that the fingers are of substantially the same length. This does not contribute patentability since it is considered merely a matter of choice or design that contributes no new or unusual result. Moreover, Steiner discloses two outer fingers 11 of the same length which may be used to support the curtain at a desired height, and two inner fingers of shorter length. [52] It is obvious that with such a structure the length of the two inner fingers may be shorter than the outer fingers without affecting the structure or function of the device.

Claims 19 and 20 are further rejected as unpatentable over Perlmutter who shows three different drapery hooks each of which corresponds to applicant's as claimed. No patentable weight can be given to the term "pleater" or "pleater strip" in the absence of specific structure to lend significance thereto.

Claim 21, verbatim copy of Solomon's claim 1, is rejected on the ground that applicant cannot make this claim, since it is not readable on applicant's disclosure. There is no adequate basis for this claim since applicant does not disclose all of the features set forth in the claim. For example, the claim specifically calls for the "fingers and hook being interconnected together at their lower ends with all four fingers coming together at their lower ends closer than at their upper ends". This clause considered in the light of patentee's disclosure defines the U-shaped elements joined at their nested bights or the equivalent thereof. Hence, the clause contains positive structural limitations which are not disclosed by applicant. Such limitations prevent it from reading on applicant's disclosure and hence applicant cannot make this claim.

Applicant is given until August 18, 1952 in which to respond to *every* ground of rejection of this [53] action. Failure to respond to the rejection of claim 21 will be taken as a disclaimer of the subject matter covered by this claim.

Claims 11 and 13 still appear to be allowable.

This application should be prepared for Final action.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE *AUGUST 18, 1952.*

Examiner

Amendment "E" (Paper No. 14) filed August 15, 1952 in file of patent-in-suit.

[54] Hon. Commissioner of Patents

Sir:

This amendment is presented responsive to official letter of July 7, 1952.

Claim 10, line 3, erase "or loops"; line 8 after "projecting" insert—*non-perforating*—.

Claim 12, line 1 after "supporting" insert—*and hanging*—; line 2 after "of" insert—*horizontally*—; line 3, erase "pockets or tunnels" and insert—*parallel pockets*—; line 8 before "fingers" insert—*non-perforating*—.

Claim 14, line 1, erase "means" and insert—*and hanging and pleating device*—; line 2 after "of" insert—*horizontally*—; line 3, erase "pockets or tunnels" and insert—*parallel pockets*—; line 4, erase "means" and insert—*device*—; line 8 after "outwardly" insert—*and rearwardly*—; line 12 after "providing" insert—*four*—; line 12 before "pocket" insert—non-perforating—; line 13 after "fingers" insert—*with two each*—.

[55] Claim 19, line 2, erase "vertical" and insert—*vertically extending parallel*—; line 4 after "a" insert—*hanger and*—; line 5, erase "means" and insert—*device*—; line 5, erase "a plurality of" and insert—*four blunt-ended non-penetrating*—; line 6 after "width" insert—*and substantially equal length*—; last line erase "on".

Claim 20, line 4 after "of" insert—*horizontally*—; line 4 after "extending" insert—*parallel*—; line 10, erase "a plurality of" and insert—*four*—; line 12 after "elongated" insert—*non-penetrating*—.

REMARKS

Reconsideration and favorable action upon claims 10, 12, 14, 19 and 20 is asked, as it is thought that these claims in their amended form clearly and fully and definitely set forth patentable novelty over anything shown in or suggested by or hinted at in any of the citations.

Claim 10 sets forth the structure of pleater and hanger, in a manner to clearly define patentable novelty over any of the citations. The patent to Carr has the structure well illustrated in Figures 1 and 2, and the manner of use is disclosed in Fig. 3. As here shown, the arms c extend only about half way up on the back of the hook portion b, the loops are completely open to receive the portions c, and hook formations are provided at c' to catch over the upper edge of the tape or member forming the loops d. As shown in Fig. 3, the [56] hook portion is disposed entirely above the top of the curtain or drape. Thus, the structure is different and the manner of use is different and the result accomplished is different, in that the entire curtain or drape at its upper edge will be disposed below the top of a rod on which the hook portion is fitted, and the rod will be exposed.

The British patent to Knight shows substantially the same structure as the patent to Carr, and this is not believed to be at all pertinent.

The British patent to Charlton shows a curtain or drape having a piece stitched across the top and then stitched to form spaced apart pockets; but, it must be appreciated that applicant is not claiming this structure per se. All of the claims in this application are drawn to a pleater and hanger, and these claims clearly and fully and definitely set forth that applicant's hanger has four fingers closely spaced together and lying in the same plane and terminating at their upper extremities in non-penetrating blunt ends which make contact with the upper closed end of four pockets of the drapery without penetrating or perforating the drapery or any part thereof.

Just where and how can the single hook end 1 of Charlton be considered in any way equivalent to the four fingers in the arrangement and with the non-penetrating blunt upper ends as called for in the claims?

Examiner's Official Action (Paper No. 15) dated September 8, 1952 in file of patent-in-suit.

[62] Responsive to amendment filed Aug. 15, 1952.

Claims 10 to 14, inclusive, and 19 to 21, inclusive, are now pending in the case.

Claims 10, 19 and 20 are finally rejected as unpatentable over Carr, in view of Steiner, or further in view of Charlton. No invention is seen in modifying the Carr pleating device by providing additional vertical pleating fingers having blunted ends and arranged in spaced parallel relationship to one another and in the same plane, particularly as taught by Steiner. Steiner also discloses the upper ends of the pleating fingers as projecting well above the supporting part of the hook and being spaced two on each side of the hook. To apply the teachings of Steiner to the Carr pleating device would involve only the carrying forward of an old idea and not involved invention. Further, no invention is seen in making all the fingers of the same length, since this is considered merely a matter of choice or design that contributes no new or unusual result. Moreover, Steiner discloses two outer fingers *11* of the same length which may be used to support the curtain at a desired height, and two inner fingers of shorter length. It will be noted that with such a structure the length of the two inner fingers may be shorter than the outer fingers without affecting the structure or function of the device. No patentable weight [63] can be given to the limitation that the parallel tunnels are *closed* at their upper ends since this is considered merely a matter of uninventive choice. It will be noted that the bottom ends of the fingers *c* of Carr support the curtain in the same manner as applicant's, even though the loops are open at the top. Furthermore, no invention is seen in constructing

the parallel tunnels *d* in Carr with closed upper ends, particularly as shown by Charlton (Figure 1).

Claim 21, verbatim copy of Solomon's patent claim 1, is finally rejected on the ground that applicant cannot make this claim, since it is not readable on applicant's disclosure. There is no adequate basis for this claim since applicant does not disclose *all* of the features set forth in the claim. For example, the claim specifically calls for the "fingers and hook being interconnected at their lower ends with all four fingers coming together at their lower ends closer than at their upper ends for pinching the pleats together at the lower ends of the tunnels". The structure defined in this clause considered in the light of patentee's disclosure defines separate U-shaped elements joined at their nested bights or the equivalent thereof in which *all four* fingers come together at their lower ends providing means for pinching the pleats together at the lower ends of the tunnels. Hence, the clause contains positive structural limitations which are not disclosed by applicant. Such limitations prevent it from reading on applicant's disclosure and hence applicant cannot make this claim.

Applicant is given until October 21, 1952 in which to respond to every ground of rejection of this action. Failure to respond to the rejection of claim 21 will be taken as a disclaimer of the subject matter covered by this claim.

Claims 11 to 14, inclusive, appear allowable.

This rejection is made *FINAL*.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE OCTOBER 21, 1952. *Examiner*

Amendment "F" (Paper No. 16) filed October 3, 1952 in file of patent-in-suit.

[65] Hon. Commissioner of Patents

Sir:

This application is under final rejection dated September 8, 1952, giving a shortened statutory period for response to expire October 21, 1952.

This amendment is presented following an oral interview with the Examiners, and with the thought of placing the application in condition for allowance. It is asked that this amendment be entered and that the two additional claims presented herewith be allowed as it is thought that these claims present patentable subject matter and distinguish over all citations. Otherwise, it is requested that the amendment be entered to place the application in better condition for appeal.

Please cancel claim 21 which was entered for purposes of possible interference.

It would appear that claims 10 and 19 and 20 may not have expressed the subject matter of the invention [66] in the manner intended and desired by applicant to differentiate from the prior art as disclosed in the citations, and it is asked that claims 10 and 19 and 20 be cancelled, without prejudice, and that new claims be inserted as follows:

* 22. For use with a drapery curtain having a series of vertically extending horizontally spaced apart narrow downwardly opening parallel pockets on the inner side adjacent to the upper hanging end thereof with the upper ends of the pockets closed, a supporting hanging and pleating hook member having four elongated upright non-penetrating pocket entering fingers of substantially the same length extending upwardly in closely disposed horizontally spaced relation, said fingers having blunt upper ends and being disposed in a single plane, and a support-

* This claim was cancelled on November 18, 1953, by Amendment "G."

ing hook portion located between the two middle fingers and directed substantially at right angles to the plane of the fingers and having the supporting portion thereof below the blunt upper ends of the fingers, said fingers being more closely spaced than the spacing of the pockets whereby the fingers when fitted endwise upwardly into said pockets cooperate to draw the upper edge of the curtain together in a pinch-pleat arrangement with the several fingers each supporting a pleat through substantially the entire upright extent of the pinch-pleat and supporting each pleat laterally and forwardly and rearwardly and the fingers in the pockets having the closed upper ends supporting the drape against sagging at the upper edge.

[67] 5 ~~23~~. The combination of a drapery curtain having a pleater pocket strip applied transversely at the upper hanging edge of the curtain and said pleater strip being provided with a plurality of spaced apart vertically extending parallel pockets open at their lower ends and closed at their upper ends, said pleater strip being secured to the curtain at its upper and lower edges to leave the lower ends of the pockets open and unobstructed, a supporting hanging and pleating hook member having four elongated upright non-penetrating pocket entering fingers of substantially the same length extending upwardly in closely disposed horizontally spaced relation, said fingers having blunt upper ends and being disposed in a single plane for insertion upwardly into the open ends of a plurality of said pockets, and a supporting hook portion located between the two middle fingers with the hook portion thereof disposed rearwardly and substantially midway of the length of said fingers, said fingers being more closely spaced and brought together than the spacing of the pockets whereby the fingers when fitted endwise upwardly into said pockets cooperate to draw the upper edge of the curtain together in a pinch-pleat arrangement with the several fingers each supporting a pleat through substantially the entire vertical extent of the pinch-pleat and supporting each pleat laterally and forwardly and rearwardly with

upper ends supporting the curtain against sagging upon the fingers of the supporting member.

* * * * * * *

[68] REMARKS

[71] Claims 11 and 12 and 13 and 14 have been stated to be allowable. The newly presented claims are drawn somewhat after the manner of claim 11, and in some respects may be slightly broader, while in other respects setting forth or defining the construction in greater detail.

* * * * * * *

Therefore, it is asked that the final rejection be withdrawn and claims 22 and 23 be allowed and that this application be passed to final allowance.

[72] Otherwise, it is asked that this amendment be entered for purposes of appeal.

Attorney

Examiner's Official Action (Paper No. 17) dated October 14, 1952 in file of patent-in-suit.

[73] Responsive to proposed amendment filed Oct. 3, 1952.

The proposed amendment has not been entered since the proposed claims do not avoid the rejection set forth in the last Office action, and thus the amendment does not place the case in condition for allowance.

The proposed amendment will be entered for purpose of appeal, upon the filing of an appeal.

The *shortened statutory period* for such proper response as the condition of the case requires to avoid ABANDONMENT dates from the Final Rejection of Sept. 8, 1952 and is set to expire *Oct. 21, 1952.*

Examiner

APPLICANT'S BRIEF ON APPEAL (Paper No. 19) filed December 18, 1952 in file of patent-in-suit.

[78] This is an appeal taken from the final rejection of claims 22 and 23, which by an Examiner's letter of October 14, 1952, are "entered for purposes of appeal, upon the filing of an appeal".

* * * * * * *

[81] APPLICANT'S STRUCTURE

Applicant's invention is designed to support a drapery or drapery and curtain and the like and to accomplish pinch-pleating of the drapery or curtain as supported. To this end, the invention is for use with a drapery curtain having a series of vertically extending horizontally spaced apart narrow downwardly opening parallel pockets on the inner side adjacent to the upper hanging end thereof with the upper ends of the pockets closed, the device constituting a supporting hanging and pleating hook member having four elongated upright non-penetrating pocket fingers all of substantially the same length extending upwardly in closely disposed horizontally spaced relation, said fingers having blunt upper ends and being disposed in a single plane, and a supporting hook portion located between the two middle [82] fingers and directed substantially at right angles to the plane of the fingers and having the supporting portion thereof below the blunt upper ends of the fingers, said fingers being more closely spaced than the spacing of the pockets whereby the fingers when fitted endwise upwardly into said pockets cooperate to draw the upper edge of the curtain together in a pinch-pleat arrangement with the several fingers each supporting a pleat through substantially the entire upright extent of the pinch-pleat and supporting each pleat laterally and forwardly and rearwardly and the fingers in the pockets having the closed upper ends supporting the drape against sagging at the upper edge.

This invention is set forth in claim 22, and is then defined in claim 23 in different and perhaps more detailed language.

* * * * * * *

[83] CARR PATENT NO. 834,188

Carr does not have a series of pockets closed at their upper ends; and, the use of this device and the purpose intended for the parts is quite different from applicant's claimed invention. Carr has a tape secured

transversely of a curtain or drapery to provide loops *d* which are open at their upper and lower ends, and the suspension hook *a* is inserted upwardly through one loop *d* and is then turned and manipulated so that the shank of the hook is within the loop, the bill of the hook extending well above the top edge of the curtain indicated by the reference character *e*. The two prongs of the hook fingers *c* are then inserted upwardly through loops *d* on each side and the small hooks *c'* are disposed entirely above the tape forming the loops *d* so that the extremities or hooks *c'* of the hook fingers *c* "act as barbs and prevent the fingers from slipping accidentally out of the transverse loops *d* in the header tape of the curtain *e*" (lines 50-53). The Examiner has contended that the hooks *c'* are suggestive of blunt upper ends received in the narrow pockets closed at their upper ends, as set forth in applicant's claims; but, by examining Figures 1 and 2 of the drawing of Carr it will be seen that the hooks *c'* extend in substantially the same plane as the bill of the supporting hook *a*, and that the small hooks *c'* are disposed in the relationship as shown [84] for a particular purpose of preventing accidental displacement of the prongs from the loops, and to accomplish a result which is peculiar to the fact that Carr employs those hooks *c'* to engage over the upper edge of the tape having the loops *d* therein. There is no suggestion in the Carr patent of pockets having closed upper ends or of fingers having blunted upper ends to fit within closed pockets, or of a supporting hook structure which has its supporting portion below the upper blunt ends of the fingers as set forth in the two appealed claims. There is not in this patent any showing or suggestion of the claim combination of parts and structure as defined in finally rejected claims 22 and 23.

STEINER PATENT NO. 2,012,734

The Steiner structure is intended to be used with the fingers 11 and 12 serving after the manner of pins penetrating the material of the curtain or drape, and there is

no showing or suggestion, and there is not the remotest hint of structure that can be used with a drapery curtain having a series of vertically extending horizontally spaced apart narrow downwardly opening parallel pockets on the inner side adjacent to the upper hanging end thereof with the upper ends of the pockets closed. As shown, the two inside pin pointed fingers 12 are made shorter than the two outside pin pointed [85] fingers 11, to serve a particular purpose as set forth in the matter beginning in line 13, column 2, on page 1 of the Steiner specification. With this structure there is no thought or suggestion of using pockets, and each of the four fingers 11 and 12 is intended to penetrate the material after the manner of a pin. With the Steiner structure, the user must figure or establish location of the penetration of the four pin portions, and must manipulate the Steiner device to try and get all of the points in parallel paths of penetration in the goods to accomplish any pleasing effect. With applicant's structure, the pockets on the drape establish the locations of the four fingers, and an even and uniform and pleasing pinch-pleat arrangement is accomplished without special manipulation or measuring or other special operations on the part of the user. If an attempt be made to apply the Steiner device to the Carr showing, the tines or prongs 11 and 12 will extend upwardly through the loops *d* of the Carr tape and will project as pin points well above the upper edge of the curtain *e* of Carr. Endeavoring to make this combination of the Steiner structure with the Carr construction, an incongruous result and appearance occurs, and there is nothing at all to keep the loops of Carr from sagging down on the prongs 11 and 12 or from freely sliding off from the prongs of Steiner.

[97] Decision of the Board of Appeals (Paper No. 22) dated October 27, 1953 in file of patent-in-suit.

This is an appeal from the Examiner's action refusing to allow claims 22 and 23 which have been substituted for finally rejected claims 10, 19 and 20, for the

purpose of appeal. Claims 11 to 14, inclusive, have been allowed.

* * * * * * *

[98] The claims have been rejected as unpatentable over the prior art as represented by the three cited patents. Carr shows several modifications of a curtain suspension hook comprising, as shown in Figures 1 to 4 for example, a shank *b*, two parallel hooked fingers *c*, and a supporting hook portion *a*. As applied to a curtain *e*, the hooked fingers engage in transverse loops *d* in the heading tape of the curtain, which is folded therebetween. The fingers are provided at the upper portions with small hooks *c'* which are described as barbs serving to prevent the fingers from accidentally slipping out of the transverse loops *d* in the heading tape.

Steiner shows a drapery fixture comprising a body portion 10 having a plurality of tines or prongs 11, 12, projecting in one direction therefrom and adapted to face upwardly when in position on the curtain or drapery. A rod engaging hook 15 is disposed substantially centrally of the prongs and in a [99] position rearwardly thereof. As shown in Figures 1 and 3, these prongs are adapted to pierce the inner adjoining folds 13 of the curtain whereby the pleated portion of the drapery is held intact and effectually held against separation.

Charlton shows a curtain suspension device comprising a series of hooks 1 formed of double wire and engaging in rod supported rings 3. The hooks engage in vertical recesses or sockets in the curtain, spaced at intervals therealong.

In rejecting the claims the Examiner has taken the position that they are "unpatentable over Carr in view of Steiner or further in view of Charlton." In the Examiner's opinion, invention is not involved in modifying the Carr pleating hook by providing additional vertical pleating fingers having blunted ends, arranged in spaced parallel relationship and in the same plane, particularly since this is suggested by Steiner. He points out that Steiner also

teaches that the upper ends of the pleating fingers may project well above the supporting part of the hook and that the fingers are spaced two on each side of the hook. The Examiner further holds that invention is not required in constructing the spaced parallel loops *d* in Carr with closed upper ends, as shown by Charlton, Figure 1, it being his position that the organization of various features taken from patents of the prior art, into a single structure possessing no new or unsual function as a result of such assemblage, does not constitute basis for patentability.

Appellant's contentions with respect to the rejection of the claims are to the effect that there is no suggestion of the entire claimed structure in any one of the reference citations and that when the Examiner endeavors to combine them in the manner set forth in the statement of rejection, appellant's [100] structure still is not anticipated, it being pointed out that in attempting to combine references the Examiner has destroyed or disregarded the structure and the purpose set forth by the patentees.

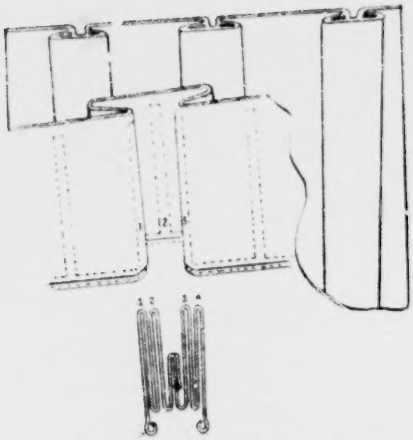
In respect to claim 22, which purports to define appellant's hook member, we are in agreement with the Examiner's view that the claim fails to patentably distinguish over the disclosures of the references. It is apparent that the hook structure as defined in this claim is substantially disclosed in Carr except that in the patent only two fingers are shown, whereas the claim calls for four, and that the principal hook member of the patent is not disposed below the upper ends of the fingers. As to the first of these differences, no more is involved, in our opinion, than a matter of degree. The described duplication of parts is not productive of effects that are unobvious and inventive. As to the second difference we think the Examiner properly relied upon Steiner as an auxiliary reference to show a curtain hook disposed below the top of the curtain engaging finger, the arrangement being such that "the prongs serve to reenforce the drapery heading against drooping or curling over and maintain it in an upstanding position". (Column

2, lines 3, 4 and 5.) It is evident that the hook member disclosed in Carr is susceptible of use with curtains in various ways. The upstanding fingers which are curved over at the top and therefore blunt could well be inserted in pockets, as in appellant's arrangement. In view of Steiner the relationship of the supporting hook and fingers defined in this claim does not, in our opinion, represent a patentable advance. We will sustain the Examiner's rejection of claim 22.

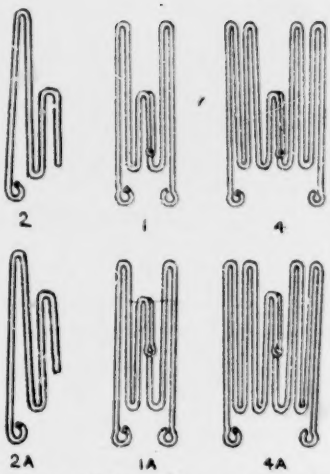
Claim 23 sets forth the combination of a drapery cur- [101] tain, having vertically extending parallel pockets closed at their upper ends, and a supporting hook member that engages in these pockets. We have carefully considered the Examiner's position but we have reached the conclusion that the structure defined in the claim involves more than the mere carrying forward of an old idea as disclosed in the references. In Carr the curtain is apparently supported from the lower loops of the fingers and in Steiner the engagement of the curtain is by penetration thereof with prongs. Charlton discloses the suspension of the curtain by hooks disposed in pockets. We are not satisfied that one with the three references before him would readily and without the exercise of invention arrive at the structure defined by claim 23. The arrangement facilitates the curtain hanging operation and while, in our opinion, appellant's contribution is not great, we think that in view of the fact that the art here involved is highly developed, patentability of the claim is not negatived by the cited patents. We, therefore, will not sustain the rejection of claim 23.

The decision of the Examiner is affirmed as to claim 22 and is reversed as to claim 23.

Board of Appeals



Box pleats are also made by using #4 hook. Insert hook as shown above into header using prong #2 in 1st. channel skip 2nd. channel and put 3rd. prong into 3rd. channel. Prong #1 and 4 do not enter channels but are inside the folds of the pleat to prevent pleat from sagging or wrinkling. Use #2 hook in end channel and skip 1 channel between each box pleat.



Each hook is designed for a separate, individual styling.

#1.—A2 prong hook, the draw drape special.

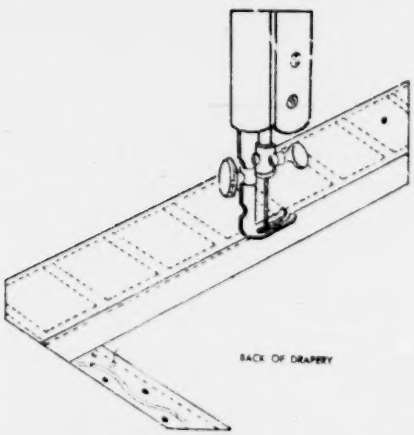
#2.—Single prong for shirred effect.

#4.—The master 4 prong, makes either group or box pleat. Perfect for making drapes or valances

Hooks shown with higher hook, as 1A, 2A and 4A are used under valance box, or other places where space does not permit use of the standard hook. No-So hooks require no sewing and work on all tracks, or poles with No-So rings.

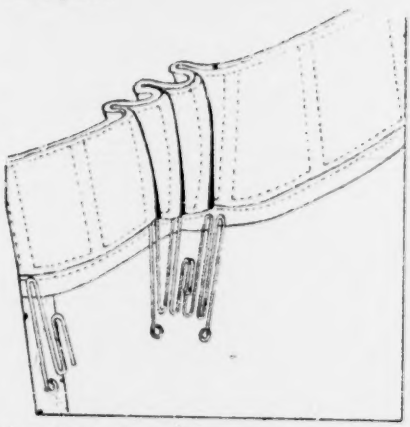
For cleaning, No-So is beyond comparison. Simply slip hook out of channels and drape opens out flat for thorough cleaning and pressing.

All hooks are made of spring steel wire and nickel plated.



Step Number Two

Sew across drape again just underneath the lower end of channels as shown above. Sew lining to lower edge of header or turn edge under and stitch across again. If a shirred effect is desired, stitch once or twice across the surplus material at lower edge of header and insert shirring cords.



Step Number Three

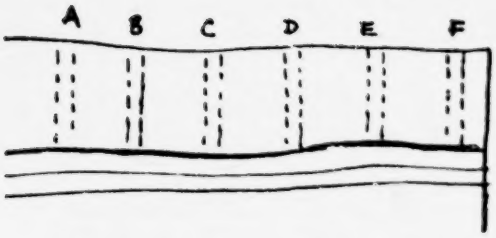
Drape is now ready for pleating. For triple pleats use the #4 No-So self-pleating hook. Insert each prong into each consecutive channel and when hook is firmly up in place, you have a group of beautifully tailored pleats, which will remain perfect under all circumstances. Use #2 single No-So hook in outside channel.

NO-SO DRAPERY ENTERPRISE

34 Rosemount Ave.

KE. 4006 TORONTO, ONT.

Plaintiff's Exhibit 45



Simplicity Is NO-SO's Leading Feature

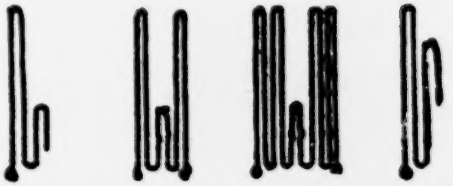
NO-SO Header and Hooks are designed to simplify both the making and cleaning of draperies.

Even the most amateur seamstress can make and hang drapes which would command favourable comment from professionals.

Its the dread of sewing on old fashioned Hooks, that keeps many a housewife from making her own draperies. NO-SO has removed this hazard, thus saving TIME and MONEY. You take no chances with NO-SO products.

The Header is made of good quality unbleached cotton, suitable for all types of material. The channels are so spaced to be adaptable to all widths of drapes.

The Header is double, which gives extra stiffness, eliminating the need of buchram and is easily attached to top of drape.



There are a choice of several types of Hooks, No's 1, 2 and 4. Each designed for a separate, individual styling:—

1.—a 2 prong hook, the draw drape special.

2.—Single prong for shirred effect.

4.—the master 4 prong, makes either group or box pleat. Perfect for making drapes or valances.

All hooks are also made with high hook for use under valance. As shown in No. 2-A.

These Hooks require no sewing, simply insert into channel. They work equally well on either tracks or poles.

NO-SO is a must – for Portieres.

Shrunken drapes may be lengthened several inches by removing original heading and applying NO-SO.

Where cleaning is concerned NO-SO is beyond all comparison. All hooks are easily removed, allowing drape to flatten out, thus enabling cleaning and pressing to be done thoroughly.

NO-SO products are available at all the leading Departmental Stores. Order yours now.

NO-SO DRAPERY ENTERPRISE

34 Rosemount Ave.

KE. 4006 TORONTO, ONT

Office - Supreme Court, U.S.
FILED
APR 26 1958
JOHN T. FEY, Clerk

No. 953

Joint Appendix to Briefs

Volume 2 (pages 189 to 277)

United States Court of Appeals for the District of Columbia

United States Court of Appeals
For the
District of Columbia Circuit
FILED DEC 12 1955
Joseph W. Stewart
CLERK

Appeal No. 12,853

Consolidated Trimming Corporation
appellant

vs.

Florence F. Loudon
appellee

Appeal from the Judgment of the District Court, dismissing Complaint for declaratory judgment of patent-invalidity and non-infringement

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4

Office Supreme Court, U.S.
FILED
APR 28 1956
JOHN T. FEY, Clerk

No. 953

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Plaintiff's Exhibit 3

March 16, 1954 F. F. LOUDON 2,672,194

SUPPORTING MEANS FOR CURTAINS AND THE LIKE

189

Filed Dec. 29, 1949

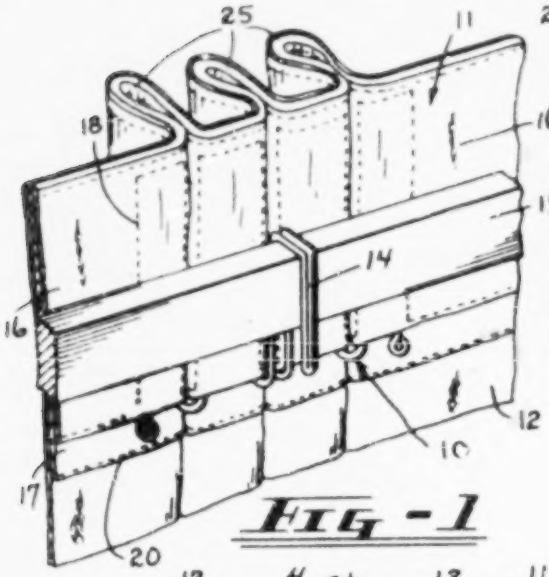

FIG - 1

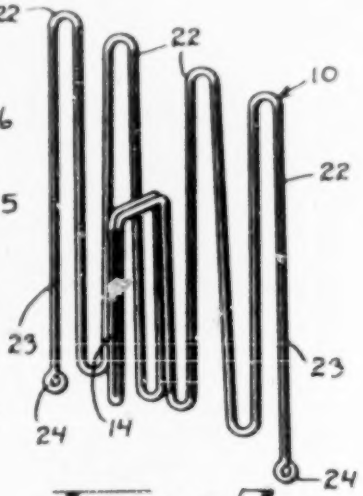

FIG - 2

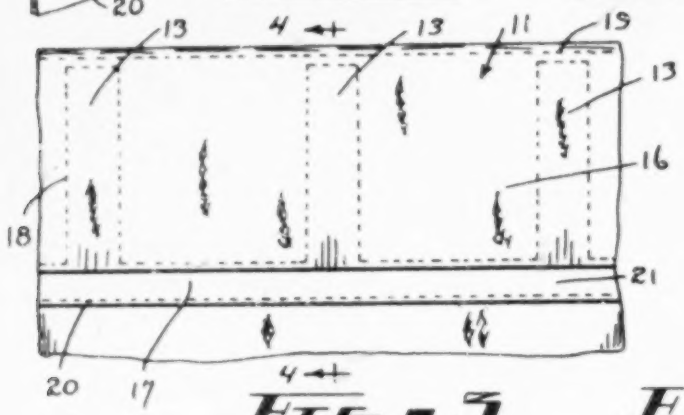

FIG - 3

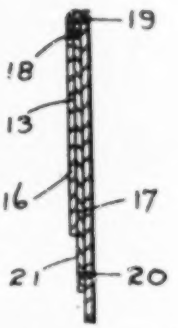

FIG - 4

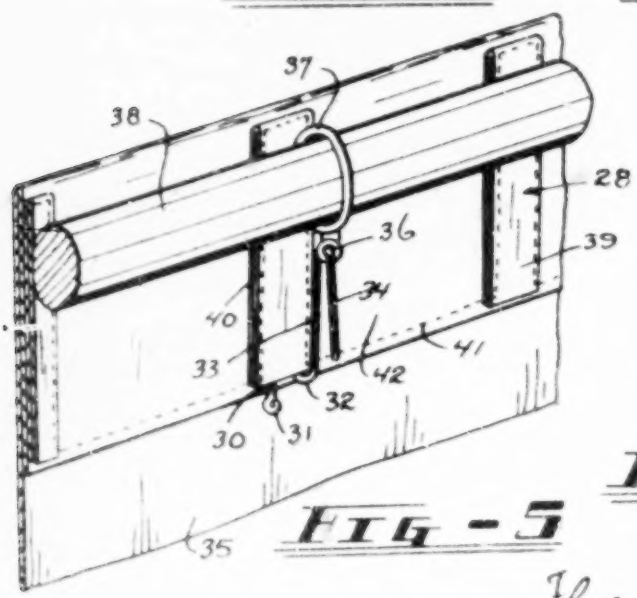

FIG - 5

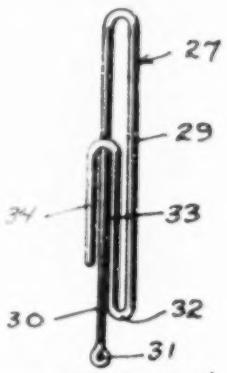

FIG - 6

INVENTOR

Florence F. Loudon

by Edward N. Fethers Tonkaugh

ATTORNEY

Patented Mar. 16, 1954 Plaintiff's Exhibit 3 2,672,194

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UNITED STATES PATENT OFFICE

2,672,194

SUPPORTING MEANS FOR CURTAINS AND THE LIKE

Florence F. Loudon, Toronto, Ontario, Canada

Application December 29, 1949, Serial No. 135,570

5 Claims. (Cl. 160—348)

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The invention relates to improvements in supporting means for curtains and the like, as described in the present specification and illustrated in the accompanying drawings that form a part of the same.

The invention consists essentially of the novel features in construction as pointed out broadly and specifically in the claims for novelty following a description containing an explanation in detail of acceptable forms of the invention.

The objects of the invention are to devise support hooks for curtains and retention means for the same mounted to the curtain; to furnish curtain support hooks that are easily detached from the curtain and which will always be replaced in the same position; to furnish a supporting means for curtains, drapes and the like which may be used to maintain the heads of the same in pleated formation while hanging from the rod; to facilitate the hanging of curtains; to construct a supporting means for curtains consisting of few and simple parts, easily and inexpensively manufactured; and generally to provide supporting means for curtains which are durable in construction, easily applied to the curtains or drapes and being sufficient for their purpose.

In the drawings:

Figure 1 is a fragmentary perspective view of a curtain pleated and supported on the rod by a hook unit.

Figure 2 is a perspective view of a hook member.

Figure 3 is a fragmentary view of a curtain showing the pocket strip secured in position to the back of same along its top edge.

Figure 4 is a sectional view as taken on the line 4—4 in Figure 3.

Figure 5 is a fragmentary perspective view of a curtain having a modified type of support hook engaging a curtain pole ring.

Figure 6 is a view of the modified form of support hook shown in use in Figure 5.

Like numerals of reference indicate corresponding parts in the various figures.

Referring to the drawings, the curtain supporting means consist of hook members, as indicated by the numeral 10 and a pocket strip or hook mounting 11 fixedly secured to the curtain 12 and having pockets 13 into which the hook members are inserted, the hook 14 of the member 10 fitting over the curtain rod 15.

The pocket strip 11 extends approximately the entire width of the curtain and is secured to the back of the same along the top edge. This section 11 is made up of any suitable resilient fabric material or any other type of a resilient material, the material being folded over and having the front fold or face 16 terminate short of the bottom edge of the back fold 17, the bottom edge of the front fold being stitched, 18, to the back fold in a manner to form pockets. The stitching 18 extends horizontally along the bottom edge of the front fold for a predetermined distance and then vertically upward to adjacent the top edge of the strip of section 11, extending horizontally and then vertically downward to be continued along the bottom edge of the front fold; a series of pockets thus being formed in the section, being spaced apart along its length. These pocket sections 13 are flat, rectangular shaped and of comparatively narrow width, each being closed at the top and open at the bottom.

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The pocket strip as thus fashioned is purchased, along with the hook members 10, and is fitted to the curtain or drape, being placed flat against the back of the curtain, the top edge of the pocket strip being even with the top edge of the curtain, and sewn thereto, the stitching 19 extending along the top edge or adjacent to same. The bottom of the section 11 is sewn to the curtain, the stitching 20 extending along the edge of the extending lower portion 21 of the back fold of the section.

The hook member 10 is a unit comprising four pocket engaging fingers 22 and a hook 14 located between the two center fingers and directed substantially at right angles to the plane of the fingers.

This member 10 is made of a single piece of material, preferably wire, fashioned to form inverted U-shaped fingers of narrow width and having rounded upper ends. The outer leg 23 of each of the end fingers is slightly longer than the rest of the unit, extending below the bottom of the fingers and the hook, and having the end turned upwardly in the form of an eye, 24, to provide blunt ends.

The hook 14 is integral with the finger portion of the member, one leg of each of the center fingers being bent to continue as the back of the hook, extending approximately half the length of the fingers, then outwardly and downwardly to form the hook, the bottom end of which is approximately level with the bottom of the fingers of the unit and above the eyes 24.

In hanging the curtain, a number of hook units sufficient to properly support the same are secured in the pocket strip. The four fingers of the individual member 10 are inserted up into four consecutive pockets, the curtain and its attached pocket strip being drawn into pleated

formation, the pockets being brought into position for the insertion of the fingers of the hook member, which fingers when inserted upwards into the pockets, maintain the curtain in position, three pleats 25 being so formed automatically with the insertion of the four fingered hook member, the hook 14 of which is positioned on the outside of the pocket strip to engage the curtain rod or pole 15, as shown in Figure 1.

Instead of three pleats, two pleats may be formed, if desired, by merely positioning three of the fingers in pockets, the fourth finger positioning itself flat against the outside face of the pocket strip; likewise, a single pleat may be made by the use of but two of the fingers.

The hook member 10 at no point grips or fastens to the pocket strip or to the curtain itself, the hook fingers being freely inserted up into the pockets, the weight of the curtain holding the bottom edge of the front fold 16 of the pocket strip on the bottom of the hook member.

In the modification shown in Figures 5 and 6, the curtain 35 is folded down at the top along its length, the fold 42 being stitched at 41 along its entire length.

Pockets 28 are fixedly secured to the outside face of the fold 42. These pockets are each formed by a strip of flexible material, such as tape 39, extending vertically upward from the bottom of the fold 42 and being stitched, 40, thereto along the sides and top to form a closed top and open bottom. This tape 39 is preferably folded over double, this construction forming a stronger pocket.

A modified type of hook member 27 is used with this form of pocket arrangement. The hook member 27 has but a single finger 29, being a length of wire bent to form the inverted U-shaped finger, the one leg of which, 30, is provided with an eye portion 31 at the end thereof, the other leg of the finger being shorter than the first and being bent outwardly and upwardly at 32 extending vertically upwards in a section 33 approximately half the length of the finger, and then being outwardly and downwardly bent to form the hook portion 34. The hook portion 34 terminates short of the lower end of the back 33. The hook extends outwardly from the finger portion of the member at approximately right angles to the plane thereof.

The hook member 27 is engaged with a pocket by the insertion of the single finger 29 in the pocket, the hook portion being secured through the eyelet 36 on a curtain pole ring 37, or, the hook may be fitted directly to the curtain rod or pole 38 itself.

It will be noted, in connection with the four fingered hook unit shown in Figures 1 and 2, that upon the curtain being taken down off the curtain rod and the hook members detached from the pocket strip, that the curtain flattens out, the pleats now being non-existent, and the curtain may be washed or otherwise cleaned and ironed, fresh pleats being formed upon the insertion of the fingers of the hook members in the pockets of the pocket strip prior to the rehanging of the curtain.

It is of course understood that modifications and ramifications may be made without in any way departing from the spirit of the invention as hereinabove described and illustrated.

What I claim is:

1. For use with a drape having at its upper end a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and supporting means having four inverted U-shaped pocket engaging fingers of narrow width and having rounded upper ends and disposed in a single plane and a hook located between the two center fingers and directed substantially at right angles to the plane of the fingers, said hook having the supporting portion thereof below the rounded upper ends of the fingers.

2. In supporting and hanging means for curtains and the like having a series of horizontally spaced apart downwardly opening narrow parallel pockets on the inner side adjacent to the upper hanging end, said supporting means comprising a single length of wire-like material having a hook portion and having a series of vertically disposed U-shaped fingers connected to and extending outwardly from opposite sides of the hook portion, the said non-perforating fingers being arranged in spaced substantially parallel relationship to one another and being disposed in a single plane substantially at right angles to the hook portions with the loops of the U-shaped portions disposed upwardly.

3. In supporting means for curtains and the like having a series of spaced apart downwardly opening narrow pockets or tunnels on the inner side adjacent to the upper hanging edge, said supporting means comprising a single length of wire-like material looped and brought together in its middle portion and forming a suspending hook portion having the bill thereof extending outwardly and downwardly, said single length of material being looped upwardly from the lower part of the hook and then being looped over and downwardly and looped outwardly and upwardly and then looped outwardly and downwardly in the provision of two substantially U-shaped pocket engaging fingers on each side of the hook with the arms of the U-shaped portions lying in a single plane substantially at right angles to the extent of the bill of the suspending hook portion.

4. In a supporting and hanging and pleating device for curtains and the like having a series of horizontally spaced apart downwardly opening narrow parallel pockets on the inner side adjacent to the upper hanging end, said supporting device comprising a single length of wire-like material doubled in its middle portion and brought together and formed to provide a suspending hook portion with the bill of the hook portion extending outwardly and rearwardly and downwardly, said length of material extending on opposite sides of the lower part of the suspending hook portion in spaced apart upwardly extending lengths turned over and then returned downwardly providing four substantially U-shaped non-perforating pocket engaging fingers with two each on opposite sides of the hook with the arms of the U-shaped fingers lying in a single plane substantially at right angles to the extent of the hook portion and with the loops of the U-shaped pocket engaging fingers disposed upwardly.

5. The combination of a drapery curtain having a pleater pocket strip applied transversely at the upper hanging edge of the curtain and said pleater strip being provided with a plurality of spaced apart vertically extending parallel pockets open at their lower ends and closed at their upper ends, said pleater strip being secured to the curtain at its upper and lower edges to leave the lower ends of the pockets open and unobstructed, a supporting hanging and pleating hook member

Plaintiff's Exhibit 6

having four elongated upright non-penetrating pocket entering fingers of substantially the same length extending upwardly in closely disposed horizontally spaced relation, said fingers having blunt upper ends and being disposed in a single plane for insertion upwardly into the open ends of a plurality of said pockets, and a supporting hook portion located between the two middle fingers with the hook portion thereof disposed rearwardly and substantially midway of the length of said fingers, said fingers being more closely spaced and brought together than the spacing of the pockets whereby the fingers when fitted endwise upwardly into said pockets cooperate to draw the upper edge of the curtain together in a pinch-pleat arrangement with the several fingers each supporting a pleat through substantially the entire vertical extent of the pinch-pleat and supporting each pleat laterally and forwardly and rearwardly with the upper ends of the fingers in the pockets having closed upper ends supporting the curtain against sagging upon the fingers of the supporting member.

FLORENCE P. LOUDON.

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Number	Country	Date
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Plaintiff's Exhibit 22

No. 763,780. PATENTED JUNE 28, 1904.

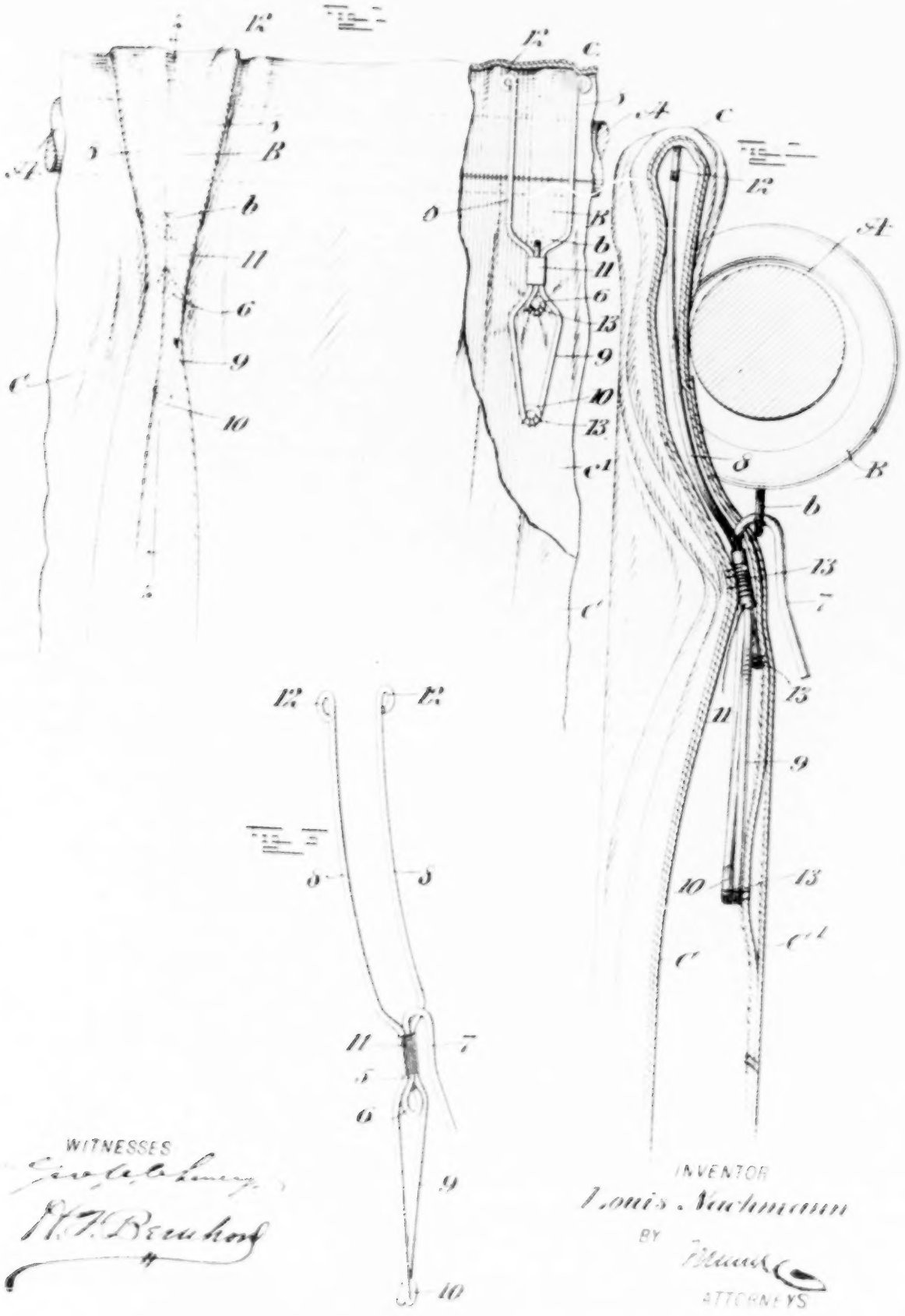
L. NACHMANN.

DRAPERY HOOK.

APPLICATION FILED OCT. 5, 1903.

NO MODEL.

195



WITNESSES

INVENTOR

Louis Nachmann

BY

ATTORNEYS

Plaintiff's Exhibit 22

No. 763,780. Patented June 28, 1904.

UNITED STATES PATENT OFFICE.

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LOUIS NACHMANN, OF NEW YORK, N. Y.

DRAPERY-HOOK.

SPECIFICATION forming part of Letters Patent No. 763,780, dated June 28, 1904.

Application filed October 5, 1903. Serial No. 175,724. (No model.)

To all whom it may concern:

Be it known that I, LOUIS NACHMANN, a citizen of the United States, and a resident of the city of New York, borough of Brooklyn, in the county of Kings and State of New York, have invented new and useful Improvements in Drapery-Hooks, of which the following is a full, clear, and exact description.

My invention relates to improvements in hooks employed for connecting a curtain, portière, or the like to rings on a curtain-pole; and the object that I have in view is the provision of an improved article adapted to sustain the upper edge portion of a curtain above or alongside of the curtain-pole, whereby a plurality of the hooks serve to support the curtain or portière in a way to conceal the pole and the rings without resorting to stiffening media for holding the curtain.

Further objects and advantages of the invention will appear in the course of the subjoined description, and the actual scope thereof will be defined by the annexed claims.

Reference is to be had to the accompanying drawings, forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the figures.

Figure 1 is a view, partly in side elevation, illustrating the application of a plurality of drapery-hooks constructed in accordance with my invention to a portion of a curtain or portière, the latter being partly broken away to show one of the drapery-hooks in elevation. Fig. 2 is a vertical cross-section on the plane of the dotted line 2 2 of Fig. 1 looking in the direction of the arrow, and Fig. 3 is a detail perspective view of the drapery-hook removed from the curtain and the pole.

A designates an ordinary curtain-pole adapted to receive curtain-rings B, each of which is provided with an eye *b*. It is common in the art to suspend curtains or portières C from the series of rings B and to employ a lining C′ on one side of the curtain, substantially as indicated by Figs. 1 and 2. The ordinary curtain-hooks are usually attached to the curtain by sewing them thereto, or each hook is provided with a safety-pin which is fastened to the curtain and is hooked into the eye of the curtain-ring; but this makes it necessary to employ means for draping the upper part of the curtain in a way to conceal the rings and the pole.

According to my invention I provide a drapery-hook, which is shown by the several figures of the drawings, said hook serving as a means for connecting the curtain to the rings and as the means for draping the upper part of the curtain in a way to dispense with the stiffening material.

The curtain-hook of my invention consists of a shank 5, having an eye 6 at one end and bent or doubled upon itself to provide the hook 7. In connection with the hook made as shown by the drawings I employ drapery members 8 9, which extend from opposite sides of the hook and are coupled or united thereto by any suitable means. The drapery members 8 9 are shown by the drawings as being bent from a single piece of wire, which is doubled upon itself to form an eye or loop 10, after which the strands of the wire are made to diverge laterally, as indicated by Figs. 1 and 3, so as to produce the lower drapery member 9. The shank 5 of the hook proper is fitted between the strands of the member 9 so as to bring the eye 6 within the opening or space which is produced in the lower drapery member 9, and the strands of this member 9 converge toward the shank 5 in order that a band or clasp 11 may be utilized as a means for holding the drapery members and the hook in rigid relation. The strands of wire diverge above the coupling-band 11, so as to form the upper drapery member 8, and the arms of this member are doubled or looped in opposite directions to form eyes 12 at the upper extremity of the drapery-hook. The arms of the upper drapery member lie at an angle to the plane of the hook 5, and the lower drapery member 9 is also disposed at an angle to the hook and inclined or curved oppositely to the upper drapery member 8, as indicated more clearly by Fig. 2. The hook proper of the drapery device occupies an intermediate position between the upper and lower drapery members 8 9, and the arm 7 of this hook extends beyond one side of both of the drapery members at the middle of the drapery device.

The lining C′ is usually attached to the up-

Plaintiff's Exhibit 22

per edge portion of the curtain C, which is doubled or folded upon itself, as at *c*. (See Figs. 1 and 2.) In using my improved device the arm 7 of the hook is thrust through the lining C' of the curtain and the member 8 of the device is fitted between the looped edge *c* and the lining C' on one side and the curtain C on the other side. The curtain or the lining may, if desired, be fastened to the band 11, the eye 6 of the hook, and the eye 10 of the drapery member as, for example, by the stitches 13, (shown by Fig. 2 of the drawings;) but the method of uniting the drapery device to the curtain or its lining may be modified or changed within wide limits. The arm 7 of the hook is adapted to be passed through the eye *b* of the curtain-ring, and the drapery device is thus suspended from the ring, so as to support the curtain and its lining in a way to conceal the ring and the pole, as shown by the drawings.

It will be seen that the upstanding member 8 of the drapery device serves to support the upper edge portion of the curtain in front of the pole and the rings, so as to dispense with any other supporting device and to overcome the necessity of draping the upper edge of the curtain over the pole and the rings, while the lower member 9 of the drapery device is concealed entirely by the curtain and the lining thereof.

As shown in Fig. 2, the forked upstanding member of the drapery device is slightly curved and straddles the curtain-pole ring, and with this construction and arrangement the ring can be pushed or pulled along the pole by grasping and pulling on the lower edge of the curtain.

The lower drapery member 9 projects below the hooks and serves as a brace or stay in making the entire device assume the proper vertical position.

Of course it will be understood that any suitable number of my drapery devices may be used in connection with the curtain and a corresponding number of rings. The improved article is simple in construction, cheap of manufacture, and it operates efficiently in suspending a curtain and in supporting the upper edge thereof in a way to conceal the pole and rings from view.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

1. A curtain drapery device consisting of a hook, provided with a shank having an attaching eye or loop by which it may be attached to a curtain, an upper drapery member extending upwardly from said hook and a lower drapery member extending downwardly below the free end of the hook, the drapery members being located in a plane at one side of the hook.

2. The combination with a curtain having a looped edge, and a ring, of a hook engaging with said ring and provided with a shank having an eye, a drapery member connected with the shank of the hook and extending upwardly into the looped edge of the curtain, and a second drapery member extending downwardly below the hook, the eye on the shank of the hook extending into an opening between the sides of the lower drapery member.

3. A curtain drapery device comprising arms connected with each other at one end, the arms diverging laterally from the point of connection for a portion of their length to produce a lower drapery member, a hook having a shank engaged at opposite sides by said arms, the arms converging at this point toward the shank of the hook, and means for holding the shank of the hook and the said arms in rigid relation, the arms diverging from each other and extending upwardly in a curved line beyond the point of engagement with the shank of the hook to form an upper drapery member.

4. A drapery device, comprising a hook having a shank provided at one end with an eye, and upper and lower drapery members formed from a single piece of wire bent upon itself and provided with an eye or loop at the bend or lower end, the free or upper ends of the wire terminating in eyes, the said shank of the hook extending between the strands of the wire and secured thereto, and occupying an intermediate position between the said upper and lower drapery members, and the eye on the end of the shank of the hook extending within an opening or space between the strands of the lower drapery member.

5. A curtain drapery device, comprising a hook adapted for engagement with a curtain-pole ring and provided with a shank, a curved drapery member extending upwardly from the hook and adapted to fit within a looped edge of a curtain, and a lower drapery member extending vertically downward to a point below the free end of the hook, the drapery members being integrally connected with each other and having converging side portions at their junction engaging the shank of the hook and secured thereto.

6. A curtain drapery device comprising a hook, a curtain-pole ring, and a forked drapery member adapted to straddle the curtain-pole ring and serving as a means for pushing or pulling the ring along the pole, as set forth.

7. The combination with a curtain, a curtain-pole, and a curtain-pole ring provided with an eye, of a drapery device consisting of a hook adapted to engage the eye on the curtain-pole ring, and a forked drapery member extending in a curved line upward from the hook and straddling the curtain-pole ring, the said forked drapery member serving as a means for pushing or pulling the ring along the pole, as set forth.

8. A curtain drapery device consisting of a curtain-pole ring, a hook, a forked drapery member extending upwardly from the hook and straddling the curtain-pole ring, and a

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downwardly-extending drapery member projecting below the hook and serving as a brace or stay to maintain the device in vertical position, as set forth.

9. The combination with a curtain having a looped edge, the curtain being provided with a lining, a curtain-pole, and a ring, of a drapery device comprising a hook, an upwardly-extending forked drapery member straddling the curtain-pole ring and extending upwardly into the loop of the curtain and a downwardly-extending drapery member projecting below the hook and serving as a brace to maintain the device in vertical position, the forked drapery member and the brace member extending between the lining on one side and the curtain on the other side and fastened in position, as set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

LOUIS NACHMANN.

Witnesses:
S. WEINBERG,
SIDNEY H. WEINBERG.

Plaintiff's Exhibit 23

A.D. 1904. Nov. 12. N° 24,522.
KNIGHT'S COMPLETE SPECIFICATION.

1 SHEET

FIG. 1.

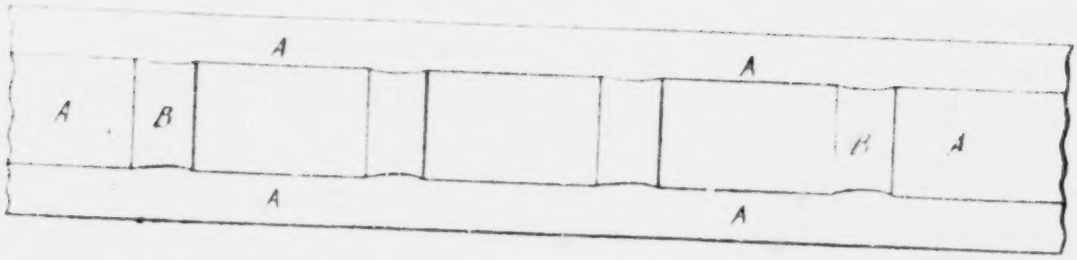


FIG. 2.

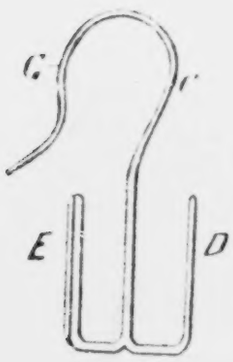


FIG. 3.

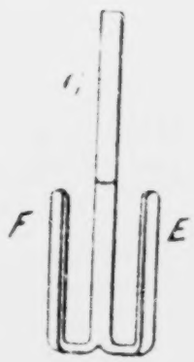


FIG. 4.

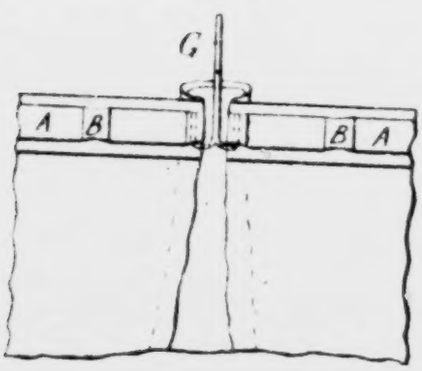
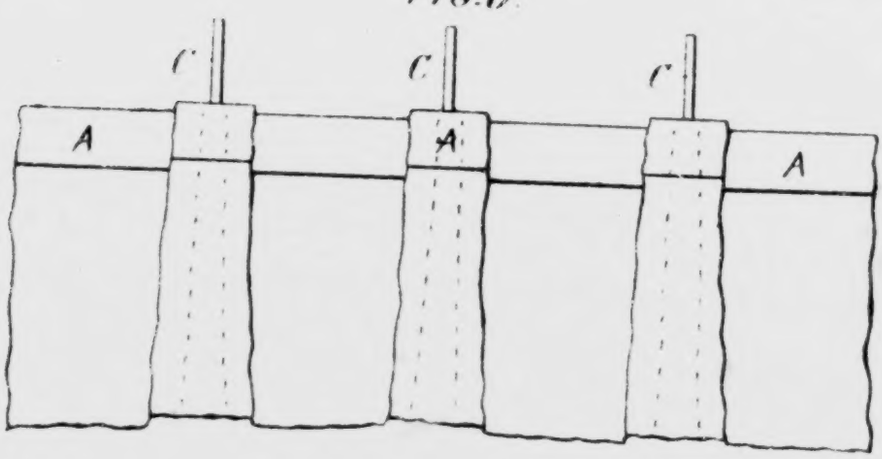


FIG. 5.



This Drawing is a reproduction of the original on file in the Patent Office.

Plaintiff's Exhibit 28

N° 24,522 A.D. 1904

Date of Application, 12th Nov., 1904

Complete Specification Left, 28th June, 1905—Accepted, 24th Aug., 1905

PROVISIONAL SPECIFICATION.

An Improved Apparatus for Heading and Suspending Curtains and Hangings.

WILLIAM EDWIN KNIGHT 132 Bruntsfield Place Edinburgh N.B. Drapery Buyer, do hereby declare the nature of this invention to be as follows:

A tape or webbing for heading of curtains and hangings having loops attached, or interwoven at intervals of its length. A hook or suspender carrying three claws arranged in triangular form. By means of the hooks and tape or webbing aforementioned, the curtain or hanging to which they are attached is gathered into folds, or box pleats, by inserting one or more of the claws of said hook, into whichever, or as many of the loops in or on the tape as may be necessary to produce the desired result.

Dated this 11th day of November 1904.

Signed WILLIAM EDWIN KNIGHT,
132 Bruntsfield Place Edinburgh N.B.

COMPLETE SPECIFICATION.

"An Improved Apparatus for Heading and Suspending Curtains and Hangings."

I, WILLIAM EDWIN KNIGHT, of 132, Bruntsfield Place, Edinburgh, in the County of Mid Lothian, North Britain, Drapery Buyer, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—That is to say:—

My said invention relates to curtains and hangings, and has for its object to provide an improved heading which admits of the curtain or hanging being draped and hung in a simple and expeditious manner. Improved means are also provided for suspending the curtain. By the use of my improved heading and suspending devices a graceful and artistic appearance is imparted to the curtain or hanging, without any supervision of, or skill on the part of the operator.

In carrying out my invention the heading consists of a tape, or comparatively narrow piece of webbing, so woven or made that a number of loops are formed on and run, preferably, lengthwise of the tape or webbing, and a hooked device, hereinafter referred to, for suspending the curtain or hanging is arranged

Plaintiff's Exhibit 23

N° 24,522.—A.D. 1904.

An Improved Apparatus for Heading and Suspending Curtains and Hangings.

to engage with said loops. The hooked device, hereinbefore referred to, consists of a shank, having formed on or fixed to it three separate and distinct hooks, said hooks being arranged triangularly, relative to the shank.

In order that my said invention and the manner of performing the same may be properly understood I hereunto append a sheet of explanatory drawings to be hereinafter referred to in describing my invention.

Figure, 1, shows a portion of the tape as made according to my invention. Figures, 2, and 3, are respectively a side and back elevation of the hooked suspending device, whilst Figures 4, and 5, are respectively back and front views of a portion of a curtain provided with my improved heading and suspending devices. In those drawings the same reference letters are used to mark the same or like parts wherever they are repeated.

The tape, A, a portion of which is shown in Figure, 1, is provided with a number of loops, B, those loops may be formed by intermittently weaving the tape of an extra thickness, the parts not so interwoven forming the loops, B.

The hooked device, Figures, 2, and 3, consists of the shank, C, having formed on or fixed to it three depending hooks, D, E, F, the said hooks being, preferably, arranged so that what might be termed the two rear or back hooks, E, F, are comparatively close to one another, for a purpose to be hereinafter referred to. The upper end of the shank, C, may also be made in the form of a hook, G, or equivalent device, for engaging with and being held by the curtain-pole ring (not shown).

To hang a curtain or the like provided with my improvements, the hooked-device is manipulated so that the hook, D, enters one of the loops, B, in the tape, A, the tape being now turned backwards and inwards until the loop, on each side of the loop already hooked, can engage with their respective hooks, E, and F, and owing to those hooks being comparatively close together, a broad box-pleat formation, Figure, 5, is given to the tape and curtain or hanging. Instead of manipulating the tape so that the loops engage with the hooks, E and F, the hooked-device may be turned so that those hooks engage with their respective loops. It will be obvious that the particular formation given to the curtain, and shown in Figure, 5, may be varied.

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is:

1. The improved means for heading and suspending curtains and the like, and consisting of a tape or webbing woven or made with a series of loops, and a hooked device for engaging in said loops all substantially as hereinbefore described.

2. A heading for curtains and the like, consisting of a tape or webbing so woven or made that a number of loops are formed on it, substantially as described with reference to Figure, 1, of the accompanying drawings.

3. The improved hooked device, substantially as described with reference to Figures, 2, and 3, of the accompanying drawings.

Dated this Twenty seventh day of June, 1904.

GEO. PATTERSON,
122, George Street, Edinburgh,
Applicant's Agent.

Redhill: Printed for His Majesty's Stationery Office, by Love & Malcomson, Ltd.—1905.

No. 834,188. PATENTED OCT. 23, 1906.

J. CARR.

CURTAIN SUSPENSION HOOK.

APPLICATION FILED AUG. 6, 1906.

2 SHEETS—SHEET 1

Fig 1

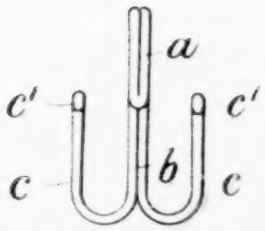


Fig 2

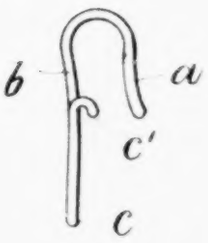


Fig 3

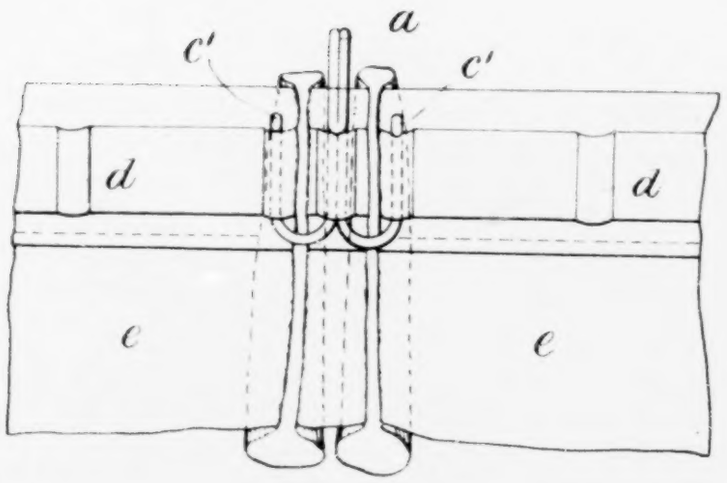
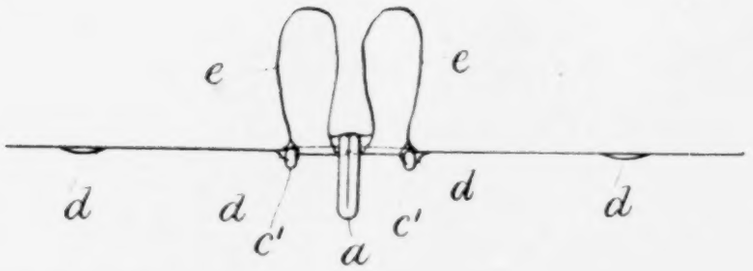


Fig 4



WITNESSES

INVENTOR

James Carr

BY

ATTORNEY

Plaintiff's Exhibit 24 209

No. 834,188. PATENTED OCT. 23, 1906.

J. CARR.

CURTAIN SUSPENSION HOOK.

APPLICATION FILED AUG. 6, 1906.

2 SHEETS—SHEET 2.

Fig 5

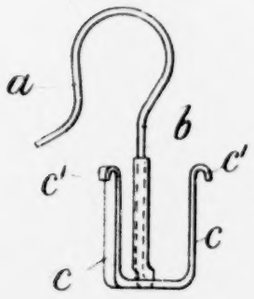


Fig 6

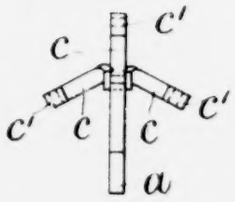


Fig 7

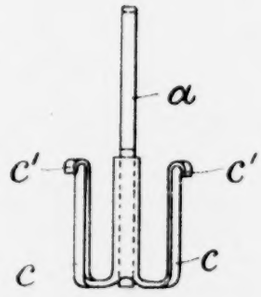


Fig 8

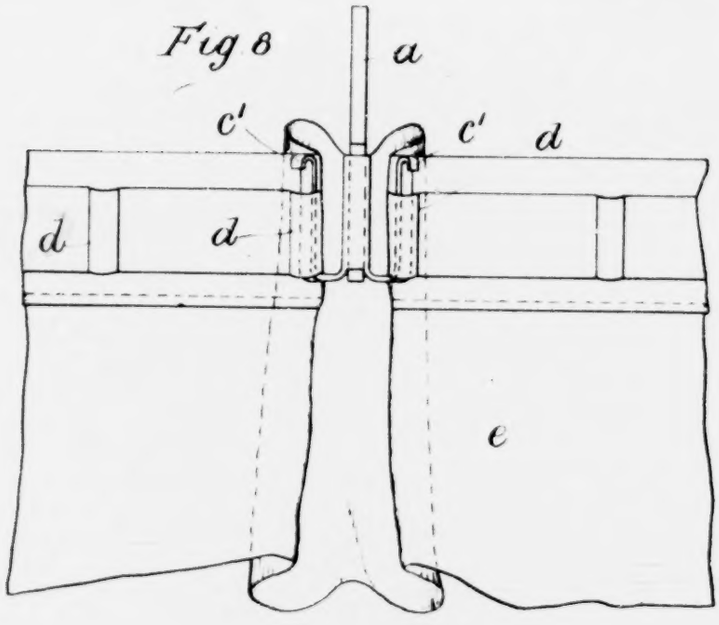
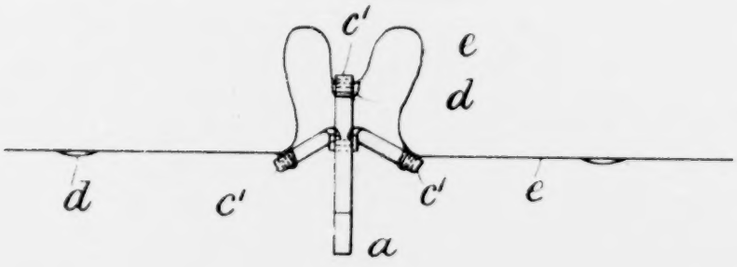


Fig 9



WITNESSES
Albert E. Wright
H. A. Sieverts

INVENTOR
James Carr
BY Richards & Geier
ATTYS

UNITED STATES PATENT OFFICE.

JAMES CARR, OF MANCHESTER, ENGLAND.

CURTAIN SUSPENSION-HOOK.

No. 834,188. Specification of Letters Patent. Patented Oct. 23, 1906.

Application filed August 6, 1906. Serial No. 329,360.

To all whom it may concern:

Be it known that I, JAMES CARR, a subject of the King of Great Britain, residing at Clarence Mills, Clarence street, Chester Road, Manchester, in the county of Lancaster, England, have invented new and useful Improvements in Curtain Suspension-Hooks, of which the following is a specification.

My invention relates to improvements in curtain suspension-hooks, and particularly to those hooks which have prongs or hooked fingers adapted to enter transverse loops in a heading-tape or suspension-band on the curtain.

In carrying my improvements into effect I form the upper or main suspension-hook as usual and I form two prongs or hooked fingers, which are turned back and preferably upward parallel with the shank of the main hook. The two prongs or hooked fingers have barbs, small hooks, or notches at their extremities to prevent them from slipping accidentally out of the transverse loops in the heading-tape.

In an alternative construction I form the hook with three prongs or hooked fingers and with barbs, small hooks, or notches at their lower extremities to hold the heading-tape.

In the accompanying two sheets of drawings, Figures 1 and 2 are elevations of my improved suspension-hook formed with two hooked fingers and with barbed or hooked extremities. Figs. 3 and 4 are elevation and plan, respectively, showing the same applied to the heading-tape or suspension-band of a curtain. Figs. 5 and 7 are elevations, and Fig. 6 is a plan, of my improved suspension-hook formed with three hooked fingers with barbed or hooked extremities; and Figs. 8 and 9 are elevation and plan, respectively, showing the same applied to the heading-tape of a curtain.

Similar letters refer to similar parts throughout the several views.

In Figs. 1 to 4, *a* designates the upper or main suspension-hook; *b*, the shank; *c*, the two prongs or hooked fingers, and *c'* the small hooks, which according to my present invention I form at the extremities of the hooked fingers *c* to act as barbs and prevent the fingers from slipping accidentally out of the transverse loops *d* in the heading-tape of the curtain *e*, to which the suspension-hook is shown applied in Figs. 3 and 4.

In the alternative construction illustrated by Figs. 5 to 9 the suspension-hook is formed with three prongs or hooked fingers *c*, which according to my invention are provided with the small hooks *c'*, as in the first construction.

In the first arrangement the shank *b* is passed through one of the transverse loops *d* and the two fingers *c* through two other loops *d*, whereas in the second construction the three hooked fingers *c* enter three loops *d*, while the shank remains outside. The difference in the form of the respective plait or gather thus obtained with the two constructions is clearly seen on reference to Figs. 4 and 9.

I am aware that prior to my present invention a suspension-hook with three prongs or fingers has been employed, and I lay no claim to such three-pronged hook apart from the barbs or hooks at the extremities of the prongs.

What I claim, and desire to secure by Letters Patent of the United States, is—

1. The curtain suspension-hook having a main hook *a*, shank *b*, and two prongs or hooked fingers *c* with barbs or small hooks *c'* at their extremities substantially as and for the purposes herein described with reference to Figs. 1 to 4.

2. The curtain suspension-hook having a main hook *a*, shank *b*, and three prongs or hooked fingers *c* with barbs or small hooks *c'* at their extremities substantially as and for the purposes herein described with reference to Figs. 5 to 9.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JAMES CARR.

Witnesses:
S. W. GILLETT,
HERBERT ROWLAND ABBEY.

Plaintiff's Exhibit 25

This Drawing is a full-size reproduction of the Original

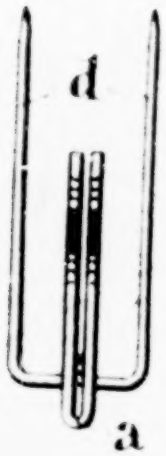


Fig. 1.

Fig. 2.

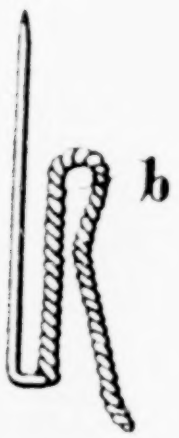


Fig. 3.

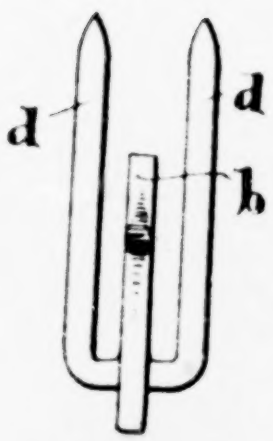


Fig. 4

Fig. 5.

Plaintiff's Exhibit 25

N° 24,665 A.D. 1907

Date of Application, 7th Nov., 1907

Complete Specification Lett, 9th June, 1908—Accepted, 1st Oct., 1908

PROVISIONAL SPECIFICATION.

Improvements in Hooks for Hanging Curtains & for other similar purposes

We GEORGE YATE ASHWELL Engineer of 88 Elsham Road London W. and THOMAS HAMMOND, of 118, York Road, Lambeth, London, S.E, do hereby declare the nature of this invention to be as follows:—

The object of this invention is to so construct hooks for hanging curtains and for other similar purposes that they may be quickly and easily inserted in or attached to or removed from the curtains or other articles and particularly that the weight of, or strain upon, the curtain or other article shall be distributed equally over, and be borne centrally and equally by, the whole of the said hook and not, as is more generally the case with hooks and appliances already in use, by a weak portion (such as the centre of a straight or looped horizontal bar) of such last mentioned hooks or appliances.

To accomplish this we take preferably a piece of metal wire or other similar substance about six to eight inches long more or less each end of which is tapered or pointed in the same manner as a needle or pin. We then bend the wire or other similar substance exactly in the centre and having twisted it together for some portion of its length to give greater strength to the upper portion which will presently form the upper loop or shank or stem,—we bend about one fifth part of the wire or other similar substance (that is to say a little less or more than half of the twisted portion) backwards until it lays, when clear of the curve or bend, parallel to, and about one eighth of an inch from, the back of the other twisted portion which is to form the shank or stem. We then take the two pointed ends (constituting about one third more or less of the entire length of the wire or other similar substance) which have not been twisted together and we bend each of them forward until, when clear of the curve or bend, they lay parallel to and about an eighth of an inch distant from the front of the shank or stem. It will thus be seen that we have formed a hook somewhat in the shape of a compressed letter "S" and having two (or more) sharpened points to form the lower loop. The shank and upper loop may be twisted or not in whole or in part and the whole may be formed of one or more pieces of wire or other similar substance or of a strip of metal or other like substance with a single or bifurcated or otherwise split end to form the forked (or pointed) loop. The hook, to which this invention applies is adjusted by inserting or interlacing the sharpened points in or through the curtains or other articles (with or without forming pleats by such insertion or interlacing) and suspending the hook by its upper loop from a curtain ring, tape, string, nail or other means of suspension.

Dated this Seventh day of November in the year Nineteen hundred & seven.

GEO. YATE ASHWELL.
THOMAS HAMMOND.

[*Price 8d.*]

Plaintiff's Exhibit 25

Improvements in Hooks for Hanging Curtains and for other similar purposes.

COMPLETE SPECIFICATION.

"Improvements in Hooks for Hanging Curtains and for other similar purposes"

We, GEORGE YATE ASHWELL, Engineer, of 88, Elsham Road, Kensington, W. and THOMAS HAMMOND, Tailor, of 118 York Road, Lambeth, S.E. do hereby declare the nature of this invention and in what manner the same is to be performed to be particularly described and ascertained in and by the following statement:-

This invention relates to bifurcated **S**-shaped hooks for suspending curtains and other articles, and formed of one or several pieces of wire or other suitable substance, the wire being partly twisted or not, or obtained by stamping out a piece of metal.

The invention consists in an improved hook the bifurcated part of which comprises two substantially vertical prongs approximately parallel to the hook proper, the whole hook having the appearance of a compressed "**S**"

The accompanying drawings illustrate several forms of hooks according to the invention.

Figures 1 and 2 being two views of one form wherein the hook is manufactured from wire.

Figure 3 being a view similar to Figure 2, but illustrating a slight modification, whilst

Figures 4 and 5 are two views illustrating a further form wherein the hook is manufactured from sheet metal.

In carrying out the invention according to one mode, a piece of metal wire or other suitable substance having a point at each end is bent exactly in the centre forming the tip, *a*, of the suspension hook proper, *b*. The wire so bent is then twisted as at *c*, the portion of wire between *a* and *c* being bent into shape as illustrated in Figure 2. The remaining portions of wire having the pointed ends are then bent outwardly and upwardly so as to form two prongs, *d*, which are approximately parallel to the rear of the hook, *b*, and to each other.

In carrying out the invention according to another mode the hook proper, *b*, may be twisted throughout its entire length as illustrated in Figure 3.

In carrying out the invention according to a further mode, the curtain hook may be formed from sheet metal. A piece of metal may be stamped out so as to form three prongs, *d*, being sharpened at their ends, whilst the central prong is simply bent to form the hook proper, *b*, as illustrated in Figures 4 and 5.

In use the prongs, *d*, are inserted or interlaced in the curtain or other article to be suspended whilst the hook proper, *b*, is suspended at its upper loop from a curtain ring, tape, string, nail, or other means of suspension. The weight or load in a hook of the nature above described is properly and centrally applied to the hook proper, *b*, and there is no tendency for the curtain to slip off the prongs, *d*. The curtain hook being stronger due to its form than the curtain hook generally employed.

Having now particularly described and ascertained the nature of our said invention and in what manner the same is to be performed, we declare that what we claim is:-

1. An improved **S**-shaped hook of the character referred to for suspending curtains and other articles comprising two substantially vertical prongs approxi-

Plaintiff's Exhibit 25

mately parallel to the hook proper, the whole hook having the appearance of a compressed "S".

2. The three forms of S-shaped hooks for suspending curtains and other articles hereinbefore described and illustrated in the accompanying drawings.

Dated this 6th day of June, 1908.

MARKS & CLERK,
18, Southampton Buildings, London, W.C.
13, Temple Street, Birmingham, and
30, Cross Street, Manchester.
Agents

Redhill: Printed for His Majesty's Stationery Office, by Love & Malcomson, Ltd.—1908.

Plaintiff's Exhibit 26

M. JANTZEN.

DRAPERY SUPPORT AND FORM.

APPLICATION FILED NOV. 1, 1912

1,087,771.

Patented Feb. 17, 1914.

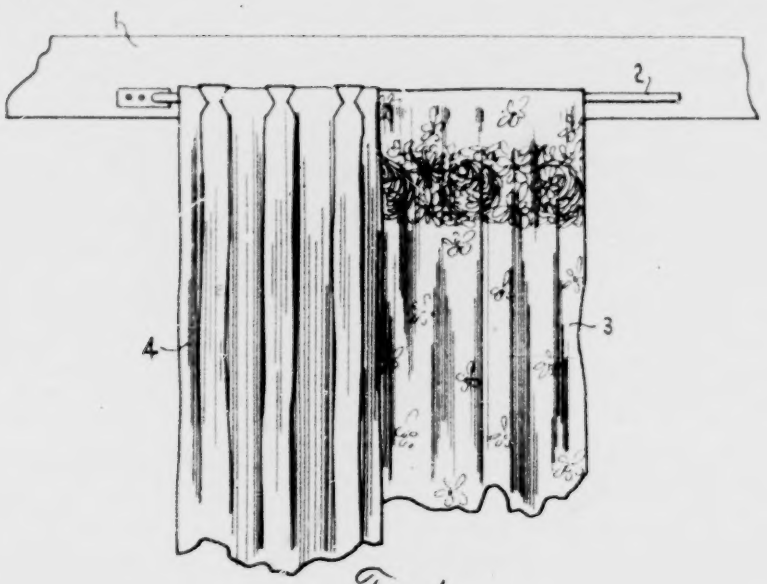


Fig. 1

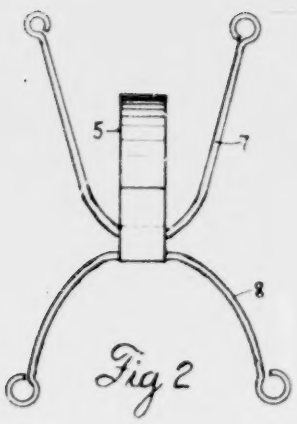


Fig 2

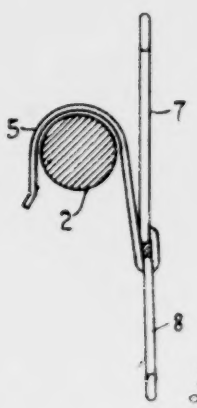


Fig 3

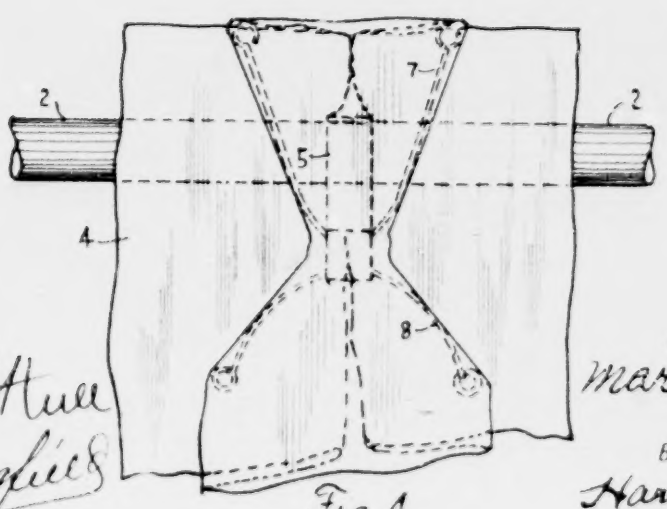


Fig. 4

WITNESSES:
Baylor Hull
A. C. Springfield

INVENTOR
Marius Jantzen

BY
Hardway & Bathey
ATTORNEY

Plaintiff's Exhibit 26

UNITED STATES PATENT OFFICE.

MARIUS JANTZEN, OF HOUSTON, TEXAS.

DRAPERY SUPPORT AND FORM.

1,087,771. Specification of Letters Patent. Patented Feb. 17, 1914.

Application filed November 19, 1912. Serial No. 732,233.

To all whom it may concern:

Be it known that I, MARIUS JANTZEN, a citizen of the United States, residing at 1401 Main street, Houston, in the county of Harris and State of Texas, have invented certain new and useful Improvements in Drapery Supports and Forms, of which the following is a specification.

My invention relates to a new and useful improvement in a combination drapery support and former.

The object of my invention is to provide a device of the character described designed to support any kind of drapery and also designed to preserve the form of the drapery folds.

With the above and other objects in view the invention has particular relation to certain novel features of construction and arrangement of parts an example of which is given in this specification and illustrated in the accompanying drawings, wherein:

Figure 1 is a fragmentary view of a drapery supported by the device described herein. Fig. 2 is a plan view of the device. Fig. 3 is a side elevation thereof showing the same secured on the supporting rod. Fig. 4 is an enlarged fragmentary view of the drapery showing the form in which the fold thereof is preserved by the device described herein.

Referring now more particularly to the drawings, wherein like numerals of reference designate similar parts in each of the figures, the numeral 1 refers to the upper portion of a window casing provided with a curtain supporting rod 2 which is designed to support the window curtain 3 in the ordinary manner.

Numeral 4 refers to the side drapery which it is customary to use in connection with window or other similar curtains.

It is to be observed, however, that the use of the device hereinafter described is not to be limited to window drapery, but may be used in connection with walls or beds or anywhere that it may be found desirable to use drapery.

The numeral 5 designates a broad flat hook which is designed to engage over the rod 2 and which may be readily engaged on or released therefrom. In connection with this hook I have provided two U-shaped formers, 7 and 8, the latter of which is inverted, said forms being soldered or otherwise secured to the lower end of the hook 5 so that the arms of the formers 7 and 8 will extend in opposite directions, said arms having a slight outward divergence so as to give the proper form to the drapery. The free ends of the arms are formed into eyes so as not to engage with and tear or injure the fabric.

A number of the devices are fastened to the drapery along the upper edge thereof, the fabric being secured around said devices as shown in Fig. 4 and the hook 5 projects rearwardly so as to be free to engage over the rod 2, or other support. The fabric or the drapery may be sewed around the device or secured thereto in any desirable manner.

As shown in Fig. 4, the arms 7 and 8 will serve to hold the fold of the drapery in a fixed form, and will preserve the uniformity of the different folds and prevent the same from becoming misshapen or disarranged.

What I claim is:

1. A drapery support and former consisting of a metallic strap, one end of which is formed into an arcuate hook, two U-shaped forming members secured to the other end thereof, each of said members having two diverging arms, the arms of one member extending in the opposite direction from the arms of the other member, and eyes carried by the free ends of the arms.

2. A drapery support and former consisting of a broad flat metallic strap, one end of which is formed into an arcuate hook adapted to hang over a curtain pole, two U-shaped forming members secured to the other end thereof, each of said members having two diverging arms, the arms of one member extending in the opposite direction from the arms of the other member and eyes carried by the free end of each of the arms.

3. A drapery support and former consisting of a broad flat metallic strap, one end of which is formed into an arcuate hook

Plaintiff's Exhibit 26

adapted to be hung over a curtain pole, two U-shaped forming members secured to the other end thereof, each of said members having two diverging arms, the arms of one member extending in the opposite directions from the arms of the other member, as and for the purposes specified.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

MARIUS JANTZEN.

Witnesses:

A. C. SPRINGFIELD,

J. W. YEAGLEY.

Plaintiff's Exhibit 29

151,108 CHARLTON'S COMPLETE SPECIFICATION. (1 SHEET)

[This Drawing is a reproduction of the Original on a reduced scale.]

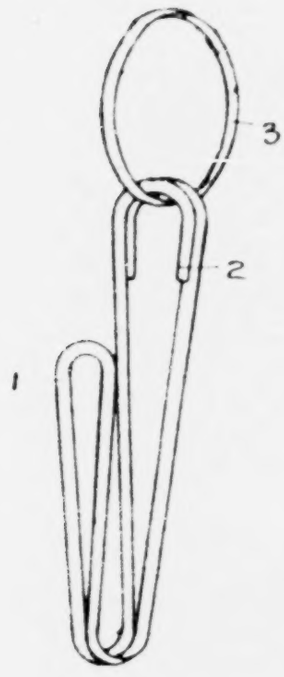


Fig. 2

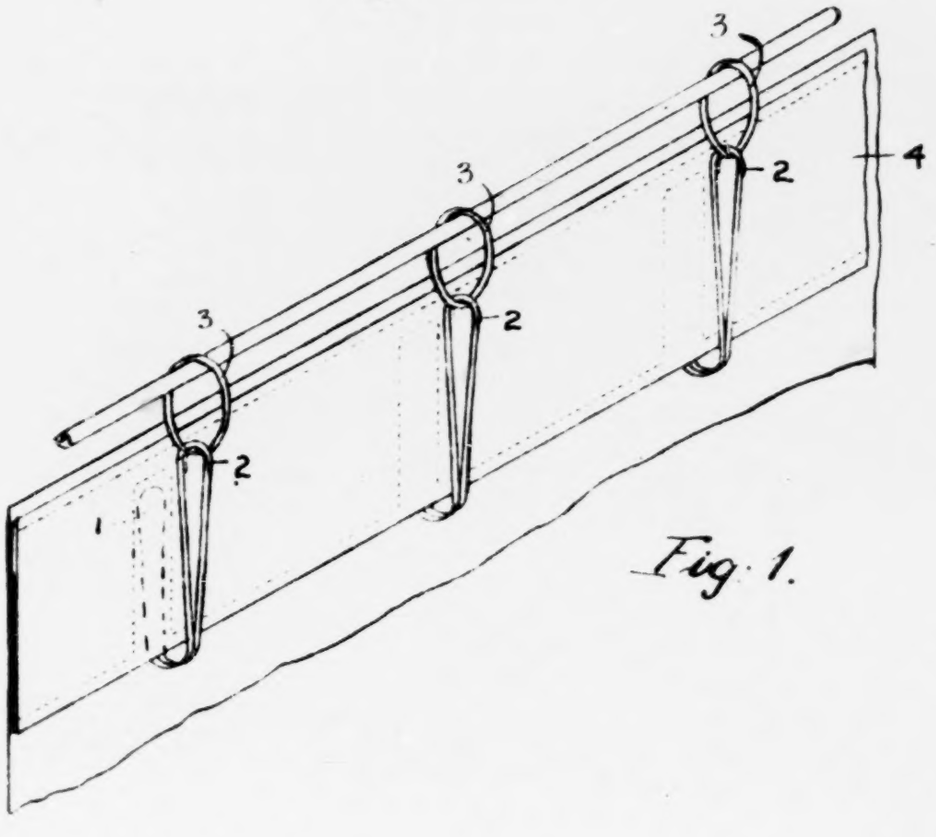


Fig. 1.

Malby & Sons, Photo Litho

Patented June 14, 1932

1,862,836

Plaintiff's Exhibit 30

UNITED STATES PATENT OFFICE

JOHN S. VANCE, OF CHICAGO, ILLINOIS

DRAPERY SUPPORTING DEVICE

Application filed February 23, 1931. Serial No. 517,645.

This invention relates to improvements in devices for supporting curtains, portières, draperies and the like, and has special relation to such devices which are adapted to retain the headings in upright condition.

The object of the invention is to provide a simple device for this purpose which can be easily secured to the member to be supported without stitching or the use of pins; which in use can be hidden in the plaited heading, and by the use of which the supporting rod or pole will be concealed.

The device comprises two parts, one provided with a hooked extension between its ends adapted to engage the supporting rod and the other adapted to be placed against the first part with a layer of the curtain goods between them and to engage the ends of the first member in a manner to firmly retain the device clamped in supporting position on the upper edge portion of the curtain.

Usually, in drapes or curtains of this kind, a French heading is formed by plaiting the upper edge of the curtain into what are termed box plaits, and one part of the device is adapted to be hidden in a box plait, the other or hooked member being arranged behind the plaited upper end.

The device is very simple in construction and application and does not mar or puncture the goods. It can readily and quickly be disengaged for cleaning purposes and can be used over and over again.

The invention will be more readily understood from the following description and the appended claims taken in conjunction with the accompanying drawing forming part of this specification and in which:—

Fig. 1 is a fragmentary view of the heading portion of a drape or curtain held in position by one of my improved supporters, part of a plait being broken away to best illustrate the device.

Fig. 2 is a fragmentary, vertical section on the line 2—2 of Fig. 1.

Fig. 3 is a fragmentary rear elevation.

Fig. 4 is a side view of the device; and

Fig. 5 is a substantially front view of the two parts of the device separated from each other.

In said drawing, 10 illustrates a curtain or drape to be suspended and 11 the supporting rod.

The drape may have an open hem at the top but they are usually provided with box-like plaits 12 which are open at the top, as shown at 13.

Devices which support the drape 10 on the rod 11 are usually provided with a ring or hook to engage over the rod and with some means for securing the device to the drape ordinarily being provided with holes by which the device can be secured to the drape by stitching.

By means of my device, such stitching, which is a slow process and has to be repeated every time the drape is cleaned, is eliminated.

My improved supporting device consists of two parts 14 and 15. The device is long enough so that, in use, when a number of them are used on a drape heading of the kind shown, the heading is held in upright condition in front of the rod 11. Such heading, commonly known as a French heading, is usually about 2½ or 3 inches high.

The part 14 of the device is preferably formed up out of wire and consists of a straight body part 16, having a flattened eye 17 formed at each end and the cross bar 18 at each end is formed to provide a slight depression 19 for a purpose to be described. The wire terminates at one end at the top and the other end is formed back parallel with the body part 16 to provide a hook-like projection 20 arranged at about the middle of the length of the device for engagement over the supporting rod 11.

The other member 15 is preferably made of a narrow strip of sheet metal, the ends of the strip being formed over to provide shallow hook-like ends 21 and these ends 21 are curved or formed inwardly at 22 between their transverse edges to engage in the depressions 19 in the member 14 to retain the two members against accidental edgewise separation.

Preferably, the sheet metal member 15 is slightly bowed out endwise, as best shown in Fig. 4, so that when being applied to the member 14 to clamp the goods of the drape

Plaintiff's Exhibit 29

PATENT SPECIFICATION

Application Date: June 25, 1919. No. 16,020/19. **151,108**

Complete Left: Dec. 24, 1919.

Complete Accepted: Sept. 23, 1920.

PROVISIONAL SPECIFICATION.

Improvements in and relating to Curtain Suspension Devices.

I, THOMAS GARDHOUSE CHARLTON, 19, Chatsworth Square, Carlisle, in the County of Cumberland, a subject of the King of Great Britain and Ireland, do hereby declare the nature of this invention to be as follows:

My invention relates to improvements in curtain suspending devices.

The invention comprises a combination of a hook adapted to be attached to any kind of ring mounted on the curtain pole and a hanging band attached to the top of the curtain. The hook is formed from a piece of doubled wire, the ends of the wire forming the shank of the hook being overlapped at the top so as to allow of such ends being spread apart for the insertion of a ring and then allowed to come together, thus securely holding the ring in a manner in which it cannot be accidentally detached by the action of drawing the curtains or shaking them. The loops formed by these overlapping wire ends are so formed that the hooks can be readily fixed to the rings without the necessity for any tools. When the rings are in position they tend to hold the overlapping ends together.

The hanging band may be formed from the curtain material itself at the top of the curtain by folding it over and stitching it so as to form a series of sockets or recesses for the hooks. I prefer, however, to make a separate hanging band. Canvas or other suitable material is twice folded over and stitched on to the top of the curtain. The fold is so stitched together as to form vertical recesses or sockets for the hooks at equal distances apart. Instead of canvas I may employ a wide tape with two selvedge edges which can be folded once and the fold sewn as above described to form hook sockets or recesses at equal distances apart.

Such suspension devices do away with the necessity for the use of permanent hooks or rings that are in the way when the curtains are washed or cleaned. Once the hanging band is stitched to the curtain the curtain is always ready for hanging when it is returned from washing, as there are no loose parts to get lost and no metal fittings to be injured at the laundry. The use of my curtain suspension device enables the curtains to be hung up and taken down both easily and quickly, while it can be readily adopted for use on existing curtains and rings.

Dated this 25th day of June, 1919.

SEFTON-JONES, O'DELL & STEPHENS,
Chartered Patent Agents,
285, High Holborn, London, W.C. 1,
Agents for the Applicant.

COMPLETE SPECIFICATION.

Improvements in and relating to Curtain Suspension Devices.

I, THOMAS GARDHOUSE CHARLTON, of 19, Chatsworth Square, Carlisle, in the County of Cumberland, a subject of the King of Great Britain and Ireland, do hereby declare the nature of this invention and in what manner the same is to

Plaintiff's Exhibit 29

be performed, to be particularly described and ascertained in and by the following statement:—

My invention relates to improvements in those curtain suspending devices which have been designed to do away with the necessity for the use of permanent hooks or rings that are in the way when the curtains are washed or cleaned, by the provision of hook members detachable from the curtain rings and adapted to engage in hook sockets in the curtain or on tapes attached thereto.

The present invention comprises a suspension device for curtains in which a set of hooks detachable from pole rings of any diameter are combined with a hanging band folded over twice and stitched to the top of the curtain so as to form vertical recesses or sockets for the hooks at convenient distances apart.

My invention is illustrated by way of example in the accompanying drawings, in which:—

Figure 1 shows an isometric view of a series of curtain hooks in engagement with hook sockets or recesses in the hanging band of the curtain.

Figure 2 shows a detail view of a hook.

Referring now to the drawings the hook 1 is formed of a piece of doubled wire, the ends of the wire forming the shank of the hook being overlapped at the top as at 2, so as to allow of such ends being spread apart for the insertion of a pole ring 3 and then allowed to come together again. This form of hook securely holds the ring in a manner in which it cannot be accidentally detached by the action of drawing the curtains or shaking them. The loops formed by the overlapping wire ends are so formed that the hooks can be readily fixed to the rings without the necessity for the use of any tools. When the rings are in position within their hook loops they tend to hold the overlapping ends of the hook together.

The hanging band 4 may be formed from the curtain material itself at the top of the curtain by folding it over and stitching it so as to form a series of sockets or recesses for the hooks. I prefer, however, to make a separate hanging band 4. Canvas or other suitable material is twice folded over and stitched on to the top of the curtain. The fold is so stitched together as to form vertical recesses or sockets for the hooks at convenient distances apart. Instead of canvas I may employ a wide tape with two selvedge edges which can be folded once and the fold sewn as above described to form hooks or recesses at convenient distances apart.

The use of my curtain suspension device enables the curtains to be hung up and taken down both easily and quickly, while it can be readily adopted for use on existing curtains and rings.

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is:—

1. A suspension device for curtains in which a set of hooks detachable from pole rings of any diameter are combined with a hanging band folded over twice and stitched to the top of the curtain so as to form vertical recesses or sockets for the hooks at convenient distances apart.

2. A suspension device for curtains substantially as described with reference to the accompanying drawings.

Dated this 24th day of December, 1919.

SEFTON-JONES, O'DELL & STEPHENS,
Chartered Patent Agents,
285, High Holborn, London, W.C. 1,
Agents for the Applicant.

Redhill: Printed for His Majesty's Stationery Office, by Love & Malcomson, Ltd.—1920

Plaintiff's Exhibit 30

June 14, 1932. J. S. VANCE 1,862,836

DRAPERY SUPPORTING DEVICE

Filed Feb. 23, 1931

Fig. 1

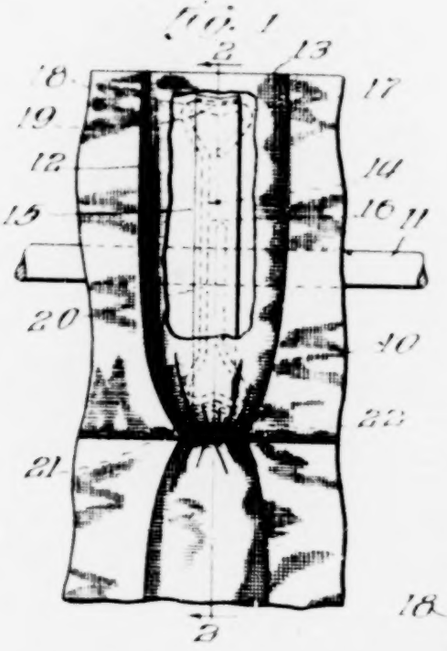


Fig. 2.

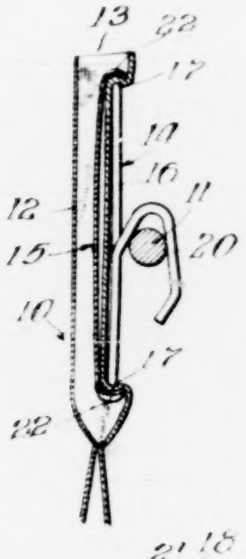


Fig. 3.

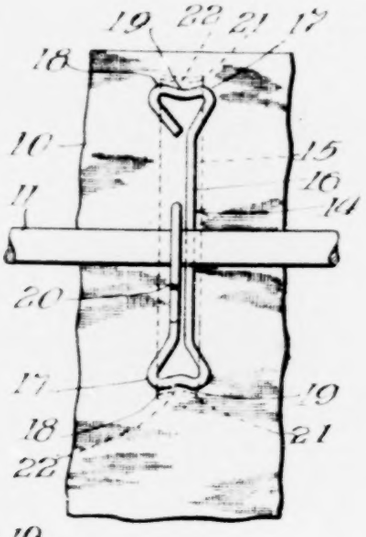
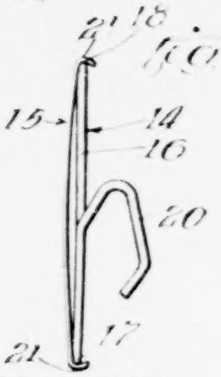
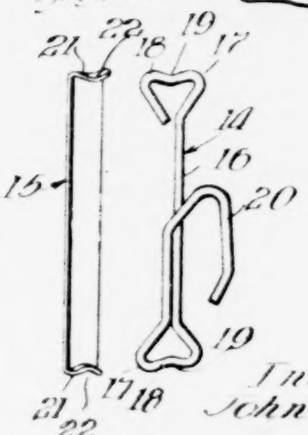


Fig. 4.



Witnesses:

Fig. 5.



Inventor:
John S. Vance.
By Edward Gay Wilson
Atty.

234 Plaintiff's Exhibit 30

between them, it can be slightly lengthened by pressing it towards the other member by pressure applied between its ends.

In applying the device to a drape, the sheet metal member 15 is inserted in a plait 12 and positioned in relation to the upper edge of the drape so as to hide the device, then one end 17 of the member 14 is placed against the rear side of the drape and is forced into one of the hooked ends 21 of the member 15. Then the two members are aligned one on the front and one on the rear face of the part of the drape being engaged and they are pressed together with sufficient pressure to cause the other end of the member 14 to snap into the other hooked end of the member 15. There is enough resiliency in the two members to allow them to clamp the goods of the drape at both ends of the device and once the device is engaged with the drape, it is retained in a manner to prevent accidental disengagement.

When it is desired to take off the device, it is simply necessary to force one end of the member 14 edgewise out of engagement with the hooked end of the member 15. The member readily gives sufficiently to allow such disengagement.

The device is extremely simple and is easily applied and removed.

As many modifications of the invention will readily suggest themselves to one skilled in the art, I do not limit or confine the invention to the specific form and construction of the device shown except within the scope of the appended claims.

I claim:

1. A device for supporting a curtain or the like and comprising an elongated member having a longitudinally extending hook-like projection between its ends for engaging a supporting rod, and a second member having its ends bent up into hooks for engaging over the ends of the first member, the two members adapted to receive a curtain heading or the like between them and clamp same between their ends.

2. The invention as defined in claim 1, the ends of the first member having central depressions and the ends of the second member formed to engage in said depressions as and for the purpose specified.

3. The invention as defined in claim 1, the second member being normally slightly bowed longitudinally to facilitate the engagement of the members with each other.

4. In a device adapted to hold a curtain heading in vertical position, two elongated resilient members, arranged and adapted to be removably engaged with each other at their ends, and adapted to be clamped on a curtain heading in vertical position with a layer of the heading clamped between them, and a hook formation on one of the members arranged and adapted to be engaged with a horizontally extending supporting rod when the device is arranged in vertical position.

In testimony whereof, I have hereunto set my hand this 13th day of February, 1931.

JOHN S[illegible]ANCE.

Plaintiff's Exhibit 31 235

Aug. 27, 1935. H. M. STEINER 2,012,734

FIXTURE FOR CURTAINS, DRAPERIES AND THE LIKE

Filed Nov. 20, 1934

Fig. 1.

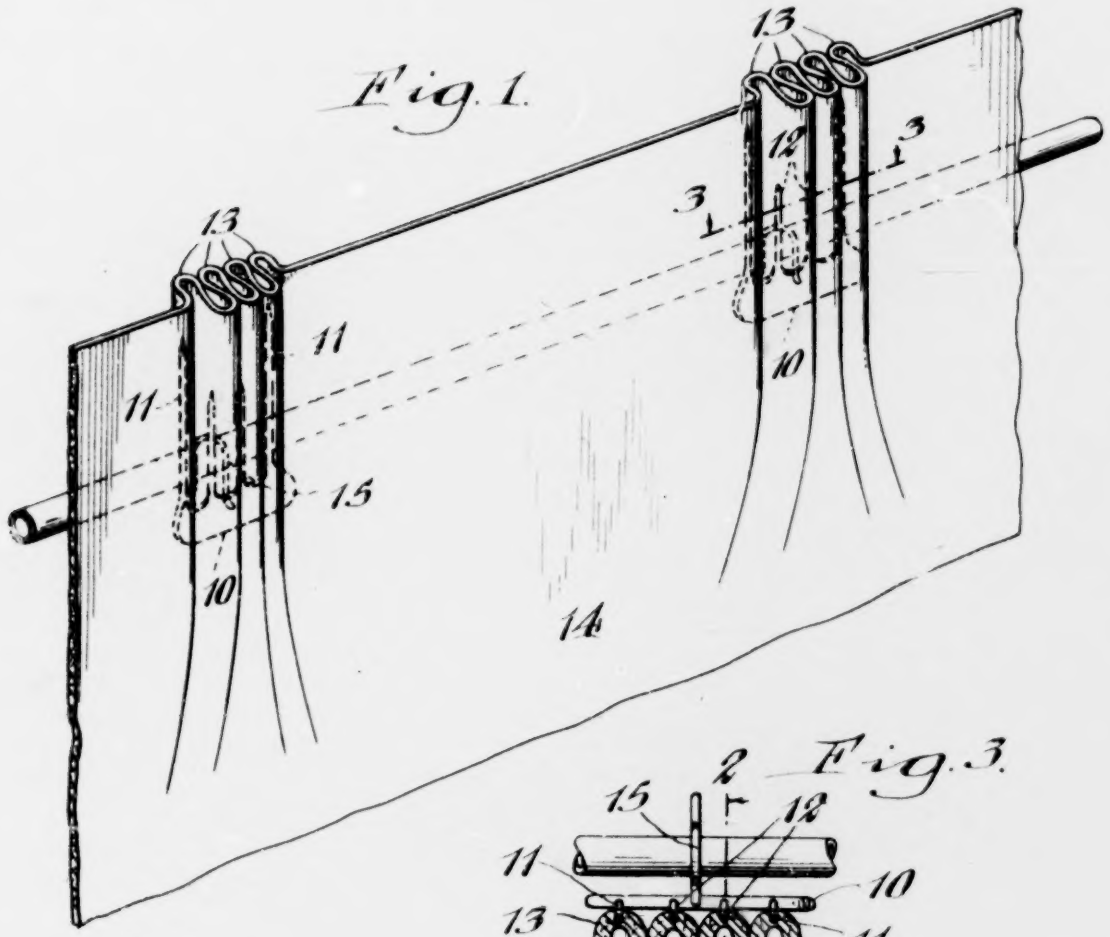


Fig. 3.

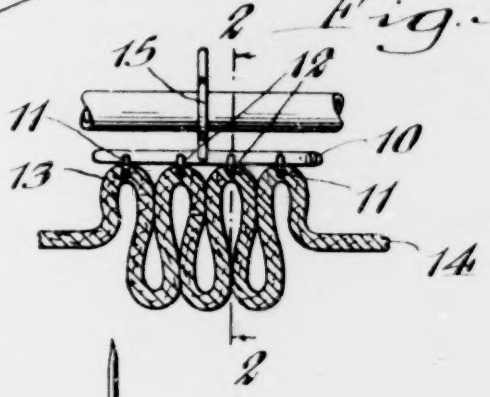


Fig. 2.

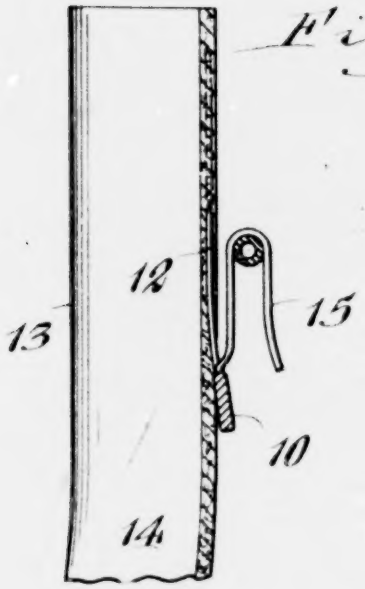
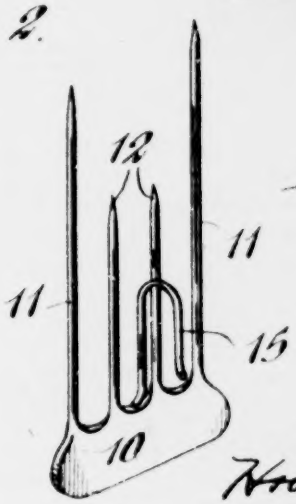


Fig. 4.



Inventor
Howard M. Steiner,
by Walter P. Cooper
Attorney.

Patented Aug. 27, 1935 2,012,734

Plaintiff's Exhibit 31 237

UNITED STATES PATENT OFFICE

2,012,734

FIXTURE FOR CURTAINS, DRAPERIES, AND THE LIKE

Howard M. Steiner, Buffalo, N. Y., assignor to H. D. Taylor Company, Buffalo, N. Y., a corporation of New York

Application November 20, 1934, Serial No. 753,843

5 Claims. (Cl. 156—21)

This invention relates to certain new and useful improvements in devices or fixtures particularly adapted for hanging or suspending curtains, draperies and the like from rods or poles.

It has for its chief object to provide a fixture of this character which has been designed for ready attachment to the heading of the curtain without resorting to sewing or the like and which effectually holds the plaited heading in an upright position and at the same time assures a neat and natural hanging of the curtains or draperies from the supporting rod.

Another object of the invention is the provision of a drapery fixture which is simple, compact and inexpensive in construction, which may be easily applied to and removed from the drapery, and which is so designed as to be concealed from view when in use.

In the accompanying drawing:—

Figure 1 is a fragmentary perspective view of a curtain or drapery showing my invention applied thereto. Figure 2 is a vertical section taken on line 2—2, Figure 3. Figure 3 is a cross section taken on line 3—3, Figure 1. Figure 4 is a perspective view of the fixture.

Similar characters of reference indicate corresponding parts throughout the several views.

This fixture, which is particularly intended for supporting curtains and draperies from rods and wherein such draperies have plaited headings extending above the rods, comprises a body having means thereon which are adapted to detachably engage or pierce the plaited portions of the heading to not only prevent their unfolding lengthwise of the rod but to also hold the heading in an upstanding position over the rod, and means for connecting the body to the curtain rod.

Referring now to the drawing wherein a preferred embodiment of my invention is shown, 10 indicates a body having a plurality of tines or prongs 11, 12 projecting in one direction therefrom and adapted to face upwardly when in position on the curtain or drapery. The prongs 11 are disposed adjacent the ends of the body 10 and are comparatively long, while the other set of prongs 12 are disposed between and in substantially spaced parallel relation to the companion set of prongs 11, and are somewhat shorter than the latter. As shown in Figures 1 and 3, these prongs are adapted to pierce the inner adjoining folds 13 of the curtain or drapery 14, whereby the plaited portion of the drapery is held intact and effectually held against separation. Furthermore, the prongs serve to reinforce the drapery heading against drooping or curling over and maintain it in an upstanding position.

In addition to serving the above functions, this fixture also serves as a means for suspending the curtain or drapery from its supporting rod, and to this end it has a downwardly-opening rod-engaging hook 15 disposed substantially centrally thereof and in a plane rearwardly of the prongs 11 and 12.

By providing the long and short tines or prongs 11 and 12, the insertion of the same into the plaited portion of the heading is facilitated, and the longer prongs, which are located at the outer sides of the fixture, serve to firmly and positively retain the plaited portion in its proper position to insure a neat and natural hanging of the curtains or draperies. Furthermore, by constructing the fixture in this manner it is concealed from view when in use and may be readily withdrawn from the curtain when desired.

I claim as my invention:—

1. A drapery fixture, comprising a body having a plurality of substantially parallel prongs projecting therefrom for longitudinal engagement with the inner folds of a plaited drapery-heading, some of said prongs being longer than the others, and a rod-engaging hook projecting from said body.

2. A drapery fixture, comprising a body having a plurality of prongs projecting therefrom for engagement with a drapery-heading, some of said prongs being longer than the others.

3. A drapery fixture, comprising a body having a plurality of substantially parallel prongs projecting therefrom in the plane of said body, the outer prongs being longer than the inner ones.

4. A drapery fixture, comprising a body having prongs projecting in one direction from adjacent the ends thereof, and relatively shorter prongs disposed therebetween in substantially spaced parallel relation thereto.

5. A drapery fixture, comprising a body having prongs projecting in one direction from adjacent the ends thereof, relatively shorter prongs disposed therebetween in substantially spaced parallel relation thereto, and means on said body for supporting the same from a rod.

HOWARD M. STEINER.

Plaintiff's Exhibit 32

ec. 12, 1939. G. F. FRENCH 2,183,188

CURTAIN SUSPENSION HOOK

Filed June 7, 1938

FIG. 1.

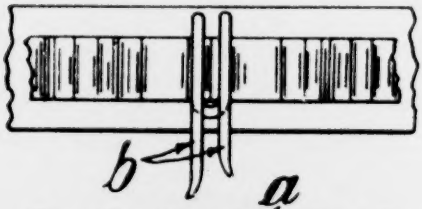


FIG. 2.

FIG. 3.

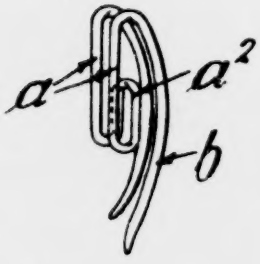


FIG. 4.

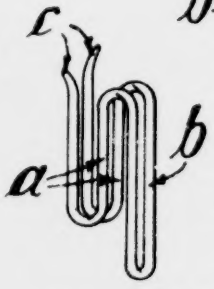


FIG. 5.

FIG. 6.

FIG. 7.

FIG. 12.

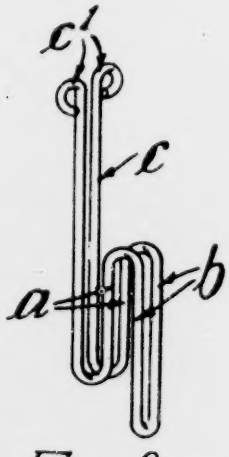


FIG. 8.

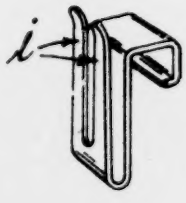


FIG. 9.

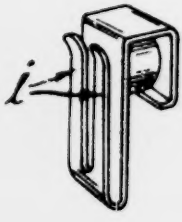


FIG. 10.

FIG. 13.

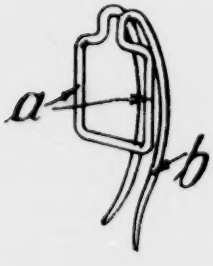


FIG. 11.

FIG. 14.

Inventor:
Elmer F. French
By his Attorney: Wales & Lund

Plaintiff's Exhibit 32

UNITED STATES PATENT OFFICE

2,183,188

CURTAIN SUSPENSION HOOK

George Frederick French, Manchester, England

Application June 7, 1938, Serial No. 212,264
In Great Britain February 25, 1937

2 Claims. (Cl. 156—21)

This invention refers to a new or improved construction of curtain suspension hook, separate or combined with a curtain rail runner or glider for use with curtains fitted with heading tape having on its front face side-by-side "hook-tubes" or pockets.

The main object of the invention is a suspension hook which will allow of being used simultaneously to pass into any two of the side-by-side hook-tubes, or pockets, and elastically and frictionally engage the intervening walls of the hook-tubes, or the furthest parts of the hook-tubes or pockets, and thereby be prevented leaving the heading tape accidentally. A further object is a particular form of said hook which when applied to the "hook-tubes" may engage and help to preserve the pleats of the curtain in their correct forms and positions, and also help to hold the curtain heading erect.

According to the invention, the improved suspension hook comprises an arrangement of two parallel members, which, on application of the hook to the side-by-side hook-tubes, pass respectively into and through the hook-tubes, and by their elasticity and juxtaposition hold the hook firmly in engagement with the hook-tubes. The improved hook may also be applied to a single hook-tube only, in like manner to the usual makes of hooks.

When requiring also to hold the curtain pleats in position and the heading erect, the improved hook also comprises a part or parts which engage the curtain heading.

In the accompanying drawing:

Fig. 1 illustrates perspectively one example of the improved hook.

Fig. 2 illustrates a face view, and

Fig. 3 a plan of a short length of heading tape, with the example of hook shown in Fig. 1 applied thereto.

Figs. 4 and 5 illustrate further examples of the improved hook.

Fig. 6 illustrates an alternative shape of the hook shown in Fig. 1 suitable for engaging a curtain rod, as distinct from a curtain runner ring.

Figs. 7 and 8 illustrate further examples of the improved hook.

Figs. 9 and 10 illustrate the invention as applied to a sheet-metal curtain rail glider or runner.

Figs. 11, 12, 13 and 14 illustrate examples of the hook when adapted to engage the furthest parts of the hook-tubes, instead of gripping the intervening parts.

Referring to Fig. 1, the hook therein shown consists of a single length of wire, folded upon itself to produce the two parallel stem parts *a*, *a*, and the forwardly and downwardly extending prong-like front parts *b*, *b*. The hook is of what is known as the "turn-over" type, in that in use it is first inverted to cause the free ends of the parts *b*, *b*, to pass upwards through two side-by-side hook-tubes, and is then reversed to cause the parts *b*, *b* to extend downwards in front of the hook-tubes. When the hook is correctly positioned, the walls of the two hook-tubes lie in the space between the two parallel parts *a*, *a*, of the hook, see Figs. 2 and 3, which thereby become gripped by the hook, and by reason of such grip, the hook is prevented accidentally leaving the heading tape.

In Fig. 4, the lower end of the stem part of the hook is provided or formed with an upturned part a^2, which lies close to the stem part and when the hook is applied to a single hook-tube, grips the front wall of the hook-tube, the same hook being adapted to be applied so as to grip the walls of two adjoining hook-tubes by its free ends being first passed upwards through the two tubes, and the hook then inverted. When so applied, the part a^2 presses upon the front of the intervening parts of the hook-tubes.

In Fig. 5 the hook shown is not of the "turn-over" type, and merely engages the two hook-tubes by its two parallel vertical parts *c*, *c* being pushed, one upwards through one hook-tube, and the other upwards through the other hook-tube.

In Fig. 6, the forward front part of the hook (which is of the "turn-over" type) is curved and adapted to hook over a curtain rod.

In Fig. 7, the two parts of the stem portion of the hook (similar to Fig. 1) are formed with outwardly curved parts *d*, *d* near the upper end, which will allow of a portion of the curtain above the heading tape being gripped and thereby held erect.

The hook shown in Fig. 8 is similar to the hook shown in Fig. 5, but, instead of the stem parts *c*, *c* being short, they are long and reach to a height which corresponds to the height of the curtain heading, and terminate in small loops c^1, c^1 by which they may be sewn to the curtain heading.

In Fig. 9, the hook is combined with a sheet metal curtain rail glider, the front part of the glider being shaped to form prongs *i*, *i*, adapted to pass upwards into two adjacent hook-tubes, or both into a single hook-tube.

In Fig. 10, the invention is shown applied to a

Plaintiff's Exhibit 32

sheet-metal curtain rail runner. The prongs *i*, *i* in both Fig. 9 and Fig. 10 may extend above the level of the part which fits the curtain rail, and lying next the curtain heading, may be caused to engage the heading and thus help to hold it erect. For such purpose, the prongs may be pointed and adapted to pierce the fabric of the heading, or they may have small holes and be sewn to the heading.

In Fig. 11 the parallel vertical stem parts *a*, *a* of the hook lie at a distance apart equal to or slightly greater than the normal distance between the furthest parts of two adjacent hook-tubes, and, on being applied to the hook-tubes, exert a pressure on said furthest parts of the hook-tubes, and thereby serve to prevent the hook accidentally leaving the hook-tubes, whilst also helping to prevent side or twisting movements.

In Fig. 12, the vertical parallel stem parts *a*, *a* terminate in points, or are curved inwards to grip the curtain material after the parts *a*, *a* have passed upwards through the hook-tubes. The other parts of the hook first extend upwards and centrally between the parts *a*, *a* and then downwards to form the front parts *b*, *b*. When this form of hook is applied to the hook-tubes, the central parts press upon the front outer faces of the hook-tubes.

In Fig. 13, the stem parts *a*, *a* are spaced apart, and the other parts extend forwardly and upwardly from the lower ends of the stem parts and then downwardly.

In Fig. 14, the wire of the hook is folded to provide an upturned part after forming the parallel-sided stem parts *a*, *a* at the lower ends of such parts, such upturned part lying between the stem parts, and the parts *b*, *b*.

The hooks shown in Figs. 4, 5 and 8 may be applied to a single hook-tube in like manner to an ordinary single-wire hook.

The forwardly and downwardly extending parts of the hooks shown in Figs. 1, 4, 6, 7, 11 and 14, reach to points below the parallel stem parts, and at their extremities are preferably pointed, or made chisel shape. They may also be the same length, or one slightly longer than the other, and one or both may be slightly bent out of the straight, i. e., away from the companion part, so as to facilitate insertion into the hook-tubes.

The hooks adapted to engage the furthest parts of the hook-tubes will usually be applied to the hook-tubes prior to pleating the tape, but the hooks which grip the intervening walls of the hook-tubes may be applied before, or after pleating.

The wire of which the wire type of hooks are made, may be ordinary round wire, or half-round wire.

What I claim is:

1. A curtain suspension hook comprising two substantially parallel legs, said legs for at least part of their length being substantially contiguous and being joined together to form a loop, said legs being adapted to contact with and grip a vertical line of attachment of a pair of curtain heading tape tubes to hold a curtain, a bent-over hook portion integral with said legs and adapted to lie directly on a curtain suspension means, said loop adapted to contact with a central line of attachment and serving as a support for said curtain.

2. A curtain suspension hook according to claim 1 in which the extreme free ends of said hook portion are spread outwardly, whereby said ends are adapted to be inserted over said line of attachment from below and then inverted so that said loop contacts with said line of attachment.

GEORGE FREDERICK FRENCH.

Plaintiff's Exhibit 33

May 28, 1940. G. F. FRENCH 2,202,627

CURTAIN HEADING TAPE AND THE LIKE

Filed Dec. 12, 1938

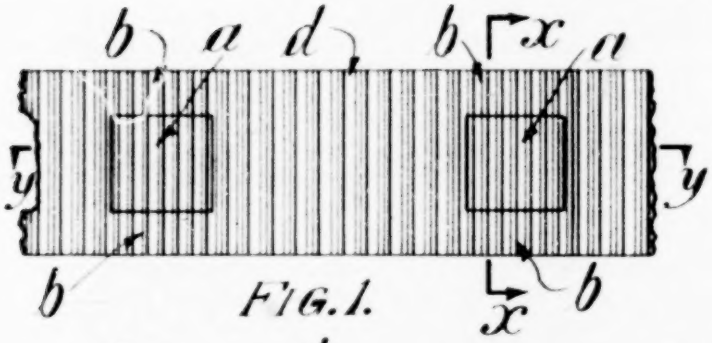


FIG. 1.

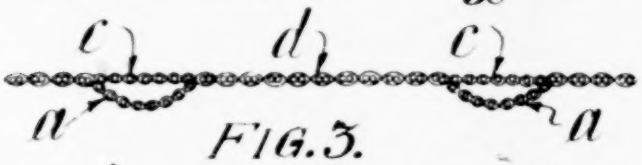


FIG. 3.

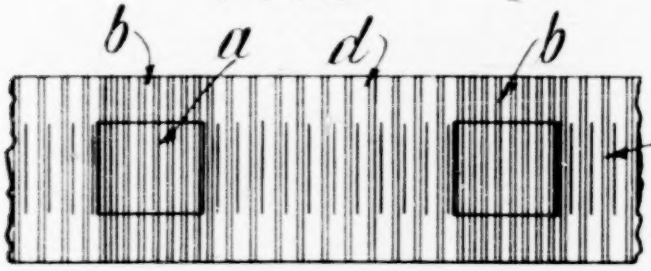


FIG. 4.

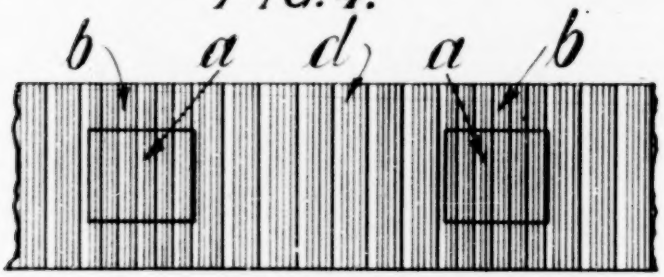


FIG. 5.

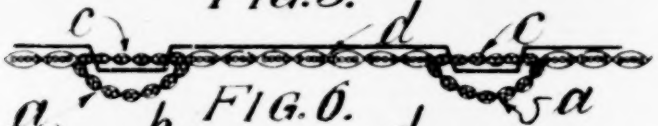


FIG. 6.

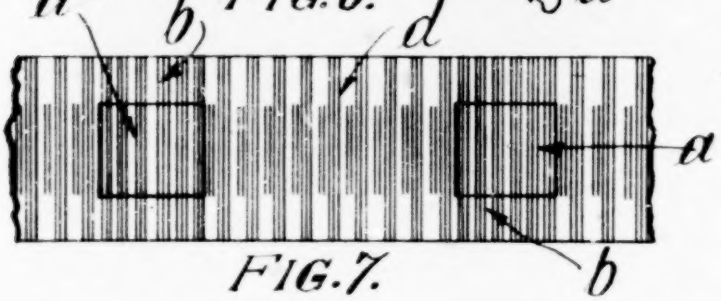


FIG. 7.

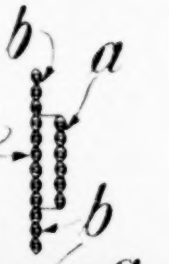


FIG. 2.

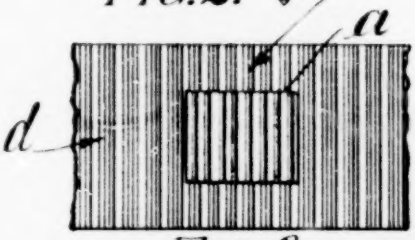


FIG. 8.

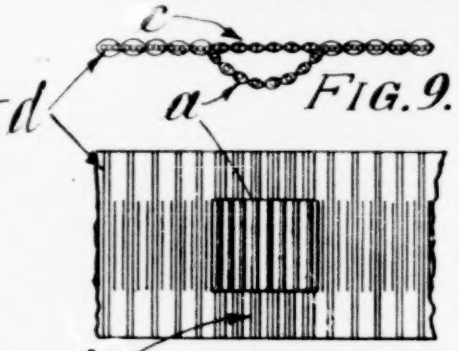


FIG. 9.

FIG. 10

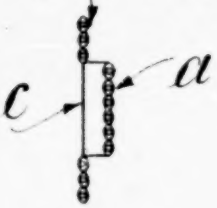


FIG. 11. FIG. 12.

FIG. 13.

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By his Attorney:
Walter Lunn

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In addition to laying two wefts in each warp shed of the said intermediate parts, the warp shedding is such as to cause the two wefts to extend across the full width of the tape, i. e., engage all the warps of the tape.

In another example, the hook-tube straps and those parts of the tape associated with them are woven, as in the first example, by two shuttles as separate thicknesses, but each intermediate part of the tape between successive hook-tubes (single or twin) is woven with two wefts at each pick, or in each warp shed, for a portion only of the width of the tape, the other portion (or portions) of said part having only a single weft laid at each pick, or in each warp shed. Whilst allowing of increased speed of production and economy of weft, this last example has the drawback of not being so strong where only a single weft is laid in a portion (or portions) of the said intermediate par

In a further example, the hook-tube straps and the parts of the tape associated with them, are woven by two shuttles, each carrying two wefts, and two wefts being laid in each warp shed in weaving each thickness, but in weaving those parts of the tape intermediate of the hook-tubes (single or twin), the shuttles lay all four wefts (two from each shuttle) in each warp shed and lay them for the full width of the tape, or only for a portion of the width, the other portion (or portions) having only two wefts per pick. In place of four wefts, there may be three wefts, one laid by one shuttle and two by the other shuttle, in forming the hook-tube straps and the associated parts of tape, and all three wefts being laid at each pick in forming those parts of the tape intermediate of the hook-tubes (single or twin), the three wefts being laid across the full width of the tape, or two across the central portion, and only one across the full width of the tape.

In all cases, the "take-up" motion of the loom is accelerated to suit the multiple weft weave.

In the accompanying drawing:

Fig. 1 is a front face view (more or less diagrammatic) of a portion of a heading tape produced according to the first-named example.

Fig. 2 is a vertical cross section on line *x*—*x*, and Fig. 3 a sectional plan view on line *y*—*y* of Fig. 1.

Fig. 4 is a front face view similar to Fig. 1 of a portion of a heading tape produced according to the second-named example.

Fig. 5 is a front face view similar to Fig. 1, and Fig. 6 a sectional plan of a portion of heading tape produced according to the third-named example.

Fig. 7 is a further front face view similar to Fig. 1 of a modified form of the third example of the improved heading tape.

Fig. 8 is a front face view, and Fig. 9 a sectional plan of a further example of the improved tape.

Fig. 10 is a front face view of a modification of Figs. 8 and 9.

Figs. 11 and 12 are vertical cross sections respectively of further examples of the improved tape.

Fig. 13 is a longitudinal sectional plan of a heading tape having pairs of side-by-side hook-tubes and produced according to the present invention.

Referring to Figs. 1, 2 and 3, *a* is the front strap part of a hook-tube, and *b*, *b* the parts of the tape above and below such hook-tube, the part *c* of the tape proper behind the strap and the strap collectively forming the hook-tube. As shown in Figs. 1 and 3, the hook-tube strap *a* and the parts *b*, *b*, also the part *c* behind the strap, are woven with a single weft at each pick, and by means of two shuttles, one forming the strap *a*, and the other forming the parts *b*, *b* and *c*. After forming the hook-tube parts, the two shuttles then form that part *d* of the tape lying between one hook-tube and the next, and in doing so lay their combined wefts in each warp shed, as shown by the wider spacing of the weft shade lines in Fig. 1 and by Fig. 3. During such double laying of the weft, the warp "take-up" motion of the loom is accelerated to suit.

As shown in Fig. 4, instead of the doubl. weft extending across the full width of the parts *d* of the tape, it may extend across only a portion of such width, i. e., across the central portion of the tape, the selvedge portions of the tape being woven by one of the shuttles only, and having only one weft per warp shed. In this example, the "take-up" is also accelerated whilst weaving each of the parts *d* of the tape.

In the example of tape shown in Figs. 5 and 6, the hook-tubes parts *a*, *b*, *b* and *c* are woven by two shuttles, each laying two wefts per pick, in forming each thickness, whilst the two shuttles lay their combined wefts (four in all per shed) in weaving the parts *d*. As in the case of Fig. 4, the four wefts may be laid in the middle portion of the tape, and two only be laid in the marginal parts of the tape, as shown in Fig. 7. As aforesaid and as shown in Figs. 8 and 9 there may be three wefts instead of four, one weft being laid by one shuttle in each shed in forming the hook-tube strap *a*, two wefts being laid by the other shuttle in each shed in forming the associated parts *c* and all three wefts being laid at each pick in forming the parts *d* intermediate of the hook-tubes (single or twin). As shown in Fig. 8, the three wefts may extend across the full width of the tape, or as shown in Fig. 10, two wefts may extend across the central portion only, and one weft extend across the full width of the tape. Whilst the three wefts are being laid, the take-up motion of the loom is accelerated.

Instead of a portion only of the warps of the central part of the tape being raised and woven by one shuttle to form a hook-tube strap, whilst the other portion of warp is woven by the other shuttle to form that part of the tape proper behind the strap, the whole of the warps of the central part may be raised and woven to form the hook-tube strap by one shuttle, whilst only the selvedge parts *b*, *b* above and below the hook-tube strap are woven by the other shuttle, which results in only free floating weft threads extending from selvedge part to selvedge part and lying behind the strap *a*, see Fig. 11. Or, instead of that part of the tape behind a hook-tube strap being without warp, it may be woven in the usual way, and the selvedges of the tape above and below the strap consist of warps only, the weft being laid in the central parts only, see Fig. 12.

In each of these last-named modifications an economy of material is effected, and the tape is rendered more pliable where each hook-tube comes, which causes the hook-tube straps *a* to more readily stand out from the tape, especially when the tape is pleated.

As shown in Fig. 13, the improved

Patented May 28, 1940

2,202,627

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UNITED STATES PATENT OFFICE

2,202,627

CURTAIN HEADING TAPE AND THE LIKE

George Frederick French, Manchester, England

Application December 12, 1938, Serial No. 245,254

In Great Britain December 18, 1937

8 Claims. (Cl. 139—390)

This invention refers to woven tape of the kind having at intervals along its length "hook-tubes" and adapted for use on curtains for suspension purposes, or for use with tent closures, or seat covers, and the like, where two or more parts require to be adjustably connected. For curtain suspension purposes, the tape (called "heading" tape) usually has drawcords for pleating purposes. By "hook-tube" is meant a short strap woven integrally at each end with the tape proper and leaving a space between itself and the tape for a hook to enter and engage the strap.

In the usual makes of said curtain heading tape only a single hook-tube is formed at intervals along the tape. In the construction of tape forming the subject of my co-pending application No. 222,744 two (or twin) hook-tubes take the place of the single hook-tubes. In the case of a pleating tape, the hook-tubes (single or twin) lie in the pleat channels and (or) on the pleat ridges, or to right and left of the pleat ridges, when the tape is pleated.

In one method of weaving the known tape having the single hook-tubes, extra warps are provided to form each hook-tube strap, and two shuttles are used to weave the tape where the hook-tube comes, one shuttle weaving the tape proper and the other weaving the hook-tube strap, and the same two shuttles weaving those parts of the tape intermediate of the hook-tubes, one shuttle weaving the back part or tape proper and the other shuttle interweaving at intervals of several picks or warp sheds, the extra hook-tube warps into said intermediate parts, the said interwoven parts corresponding in width transversely of the tape to the vertical length of the hook-tubes, and leaving thin marginal edges beyond the hook-tubes. Such make of tape is virtually a two-ply fabric along its central parts, but, owing to the open spacing of the weft used to bind the central portions together, the tape is other than strong. Moreover, in using a single shuttle for each of the aforesaid weaving operations, production is comparatively slow, the "take-up" being the same throughout the whole length of the tape, and being governed by the laying of a single weft in each warp shed for the hook-tubes and those parts of the tape proper behind the hook-tubes.

In another method of weaving the known tape with single hook-tubes, one shuttle only is used throughout the whole length of the tape, and to allow of this, the loom "take-up" motion is stopped whilst each hook-tube strap is being woven, and after forming such strap the "take-up" motion is restarted, and the weaving of the tape proper continued where it left off, until the next hook-tube strap is reached, and so, continually. Owing to the frequent stoppages of the "take-up" motion and to the fact that the back portions of the tape where the weaving stops and starts are only held together by one or two wefts, the rate of production is slow and the tape is relatively weak in structure.

The object of this invention is primarily to expedite the weaving operations and thereby reduce the cost of production, and further, to produce a tape which is stronger, and has a better appearance than the tapes produced by the said known methods. A further object, in some forms of the tape, is to obtain a more pliable tape transversely where the hook-tubes come.

According to the invention, two shuttles are used in the weaving of the tape, and whilst one shuttle lays its weft in each warp shed whilst forming the hook-tube straps, and the other shuttle lays its weft in each warp shed whilst forming those parts of the tape above and below and behind the hook-tube straps, the two shuttles lay their combined wefts in each warp shed of those parts of the tape intermediate of the hook-tubes (single or twin), the whole of the multiple wefts extending across the full width of the tape, or across a portion only, and certain only of the said wefts extending across the full width of the tape.

To allow for the laying of the multiple weft, the speed of the loom "take-up" motion is increased, thereby causing a quicker rate of production, with consequent reduction in cost. And, owing to the multiple weft lay, a fuller and stronger make of tape is produced. The speed of the "take-up" motion may be accelerated when only laying a single weft (or two wefts) per pick when forming the hook-tube straps and their associated parts, with consequent saving of material, and increased rate of production, although slightly reducing the closeness of the texture of said parts.

In one example of the invention, either in regard to a tape with single hook-tubes, or to a tape with pairs of hook-tubes at spaced intervals, the two shuttles operate simultaneously, one to weave a hook-tube strap and the other to weave those parts of the tape associated with the hook-tube, and each shuttle lays one weft at each pick, or in each warp shed. The two shuttles then operate to form that part of the tape extending between hook-tubes (or tubes) and hook-tube (or tubes), and lay two wefts in each warp shed.

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be applied to a tape embodying spaced pairs of side-by-side hook-tubes, in place of the spaced single hook-tubes, each hook-tube strap and the parts of the tape *b*, *b* and *c* being woven as separate thicknesses, and each shuttle laying one or two wefts in each warp shed, and the parts *d*, *d*, being woven by both shuttles laying their combined wefts in each warp shed of said parts, said wefts extending across the full width of the tape as shown in Fig. 5, or across the central portion only as shown in Fig. 7, whilst only one, two or three wefts are laid in the outer portions.

When the tape is provided with drawcords, they, the drawcords, will preferably pass in front of the tape where each hook-tube comes, and behind each hook-tube strap, and then through the tape proper and behind the parts *d*, as shown in Figs. 6 and 13. The drawcords may however, merely pass through the edge parts of the tape. And by arranging the cords to pass behind both hook-tube straps in the case of twin hook-tubes, the pleat channel in which the hook-tube straps lie may be somewhat larger than the other pleat channels, and thus cause the curtain when pleated to have a box-pleat effect where the two hook-tube straps come, and an ordinary small pleat effect at other parts.

What I claim is:

1. Curtain heading and like tape have hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having a plurality of weft threads in each warp shed, said plurality of weft threads being divided at the areas containing hook-tubes so that a portion thereof is woven into the hook-tube straps and the remainder is woven into the part of said tape behind the hook-tubes.

2. Curtain heading and like tape having pairs of hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said pairs of hook-tubes having a plurality of weft threads in each warp shed, said plurality of weft threads being divided at the areas containing hook-tubes so that a portion thereof is woven into the hook-tube straps and the remainder is woven into the part of said tape behind the pairs of hook-tubes.

2. Curtain heading and like tape having hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having a plurality of weft threads in each warp shed, said pluraltiy of weft threads being divided at the areas containing hook-tubes so that a portion thereof is woven into the hook-tube straps and the remainder is woven into the part of said tape lying above, below and behind the hook-tubes.

4. Curtain heading and like tape having hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having two weft threads in each warp shed, said weft threads being divided at the areas containing hook-tubes so that one thread is woven into the hook-tube straps and the other is woven into the part of said tape behind the hook-tubes.

5. Curtain heading and like tape having hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having four weft threads in each warp shed, said weft threads being divided at the areas containing hook-tubes so that two threads are woven into the hook-tube straps and the other two threads are woven into the part of said tape behind the hook-tubes.

6. Curtain heading and like tape having hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having three weft threads in each warp shed, said weft threads being divided at the areas containing hook-tubes so that one thread is woven into the hook-tube straps and the other two threads are woven into the part of said tape behind the hook-tubes.

7. Curtain heading and like tape having hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having a plurality of weft threads in each warp shed, said plurality of weft threads being divided at the areas containing hook-tubes so that a portion thereof is woven into the hook-tube straps and the remainder is woven into the part of said tape behind the hook-tubes, the parts of said tape above and below said hook-tubes being formed of warp threads only.

8. Curtain heading and like tape having hook-tubes at intervals along its length and formed from warp and weft threads, those parts of said tape in the intervals between said hook-tubes having a plurality of weft threads in each warp shed, said plurality of weft threads being divided at the areas containing hook-tubes so that a portion thereof is woven into the hook-tube straps and the remainder is woven into the part of said tape behind the hook-tubes, all the warp threads being woven into said hook-tube straps so that that part of said tape immediately behind said straps is formed of weft only and the edges of said tape above and below said hook-tubes is woven with weft and warp.

GEORGE FREDERICK FRENCH.

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Aug. 12, 1941. R. FRENCH 2,252,070

CURTAIN AND THE LIKE AND MEANS FOR SUSPENDING SAME

Filed Aug. 17, 1938 4 Sheets-Sheet 1

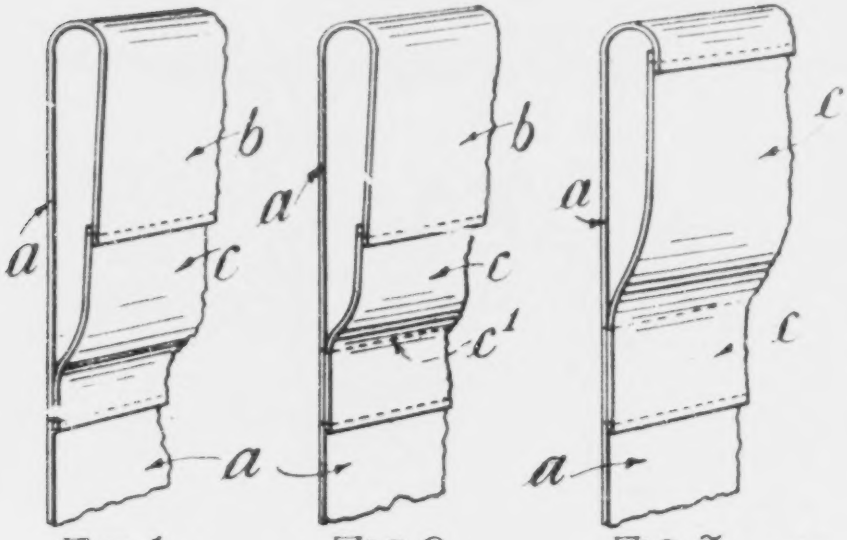

FIG. 1. FIG. 2. FIG. 3.

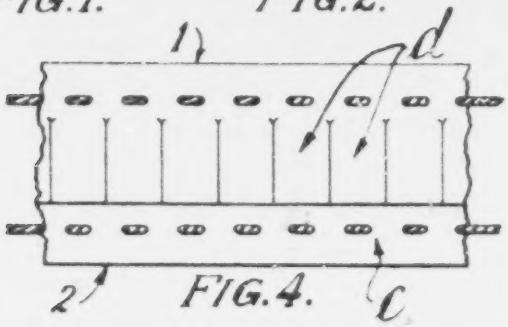

FIG. 4.

FIG. 5.

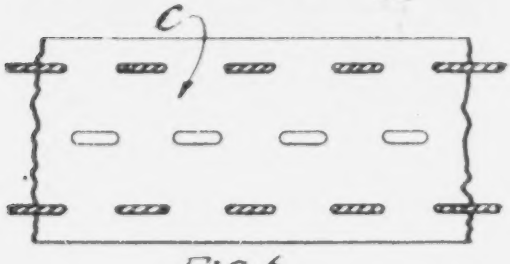

FIG. 6.

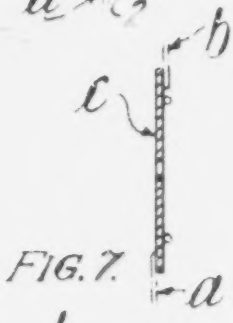

FIG. 7.

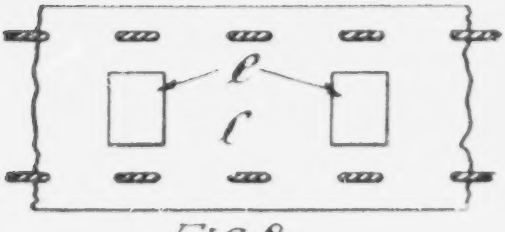

FIG. 8.

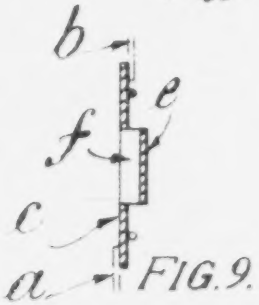

FIG. 9.

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CURTAIN AND THE LIKE AND MEANS FOR SUSPENDING SAME

Filed Aug. 17, 1938 4 Sheets-Sheet 2

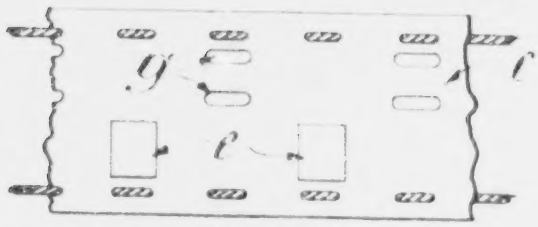

FIG. 10.
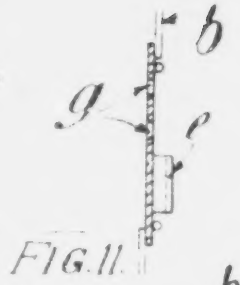
FIG. 11.

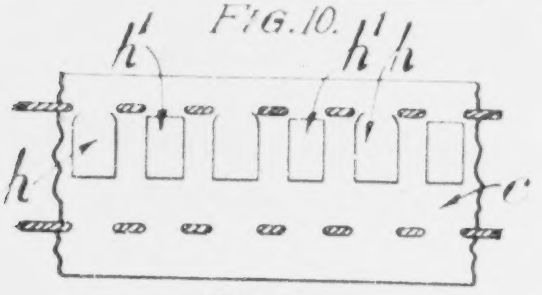

FIG. 12.

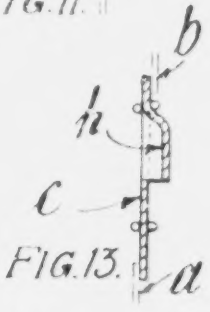

FIG. 13.

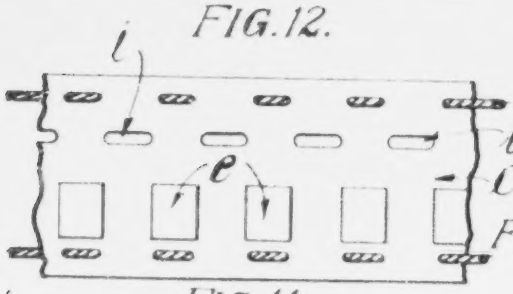

FIG. 14.

FIG. 15.

FIG. 18.

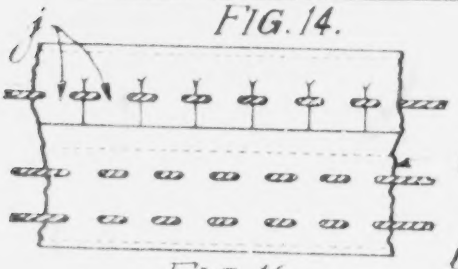

FIG. 16.

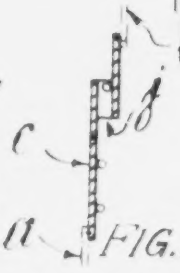

FIG. 17.

FIG. 19.

FIG. 20.

FIG. 21.

FIG. 22.

FIG. 23.

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Walter Good

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CURTAIN AND THE LIKE AND MEANS FOR SUSPENDING SAME

Filed Aug. 17, 1938 4 Sheets-Sheet 3

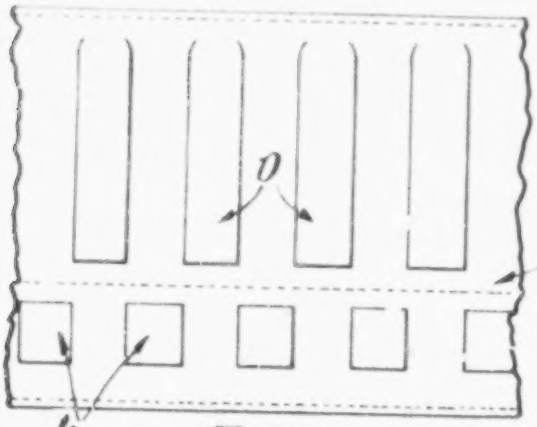

FIG. 24.

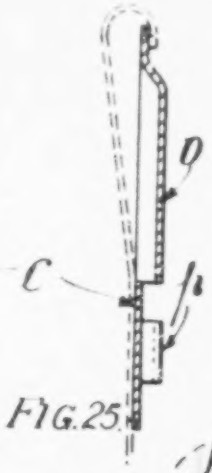

FIG. 25.

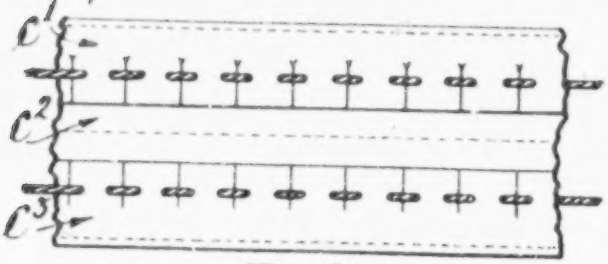

FIG. 26.

FIG. 27.

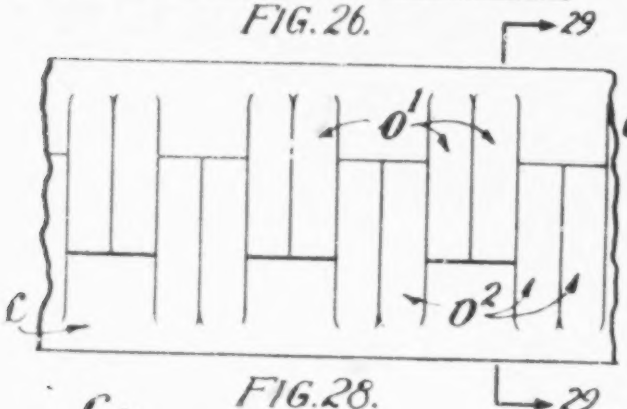

FIG. 28.

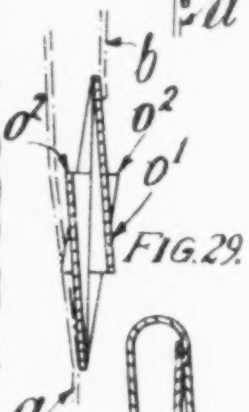

FIG. 29.

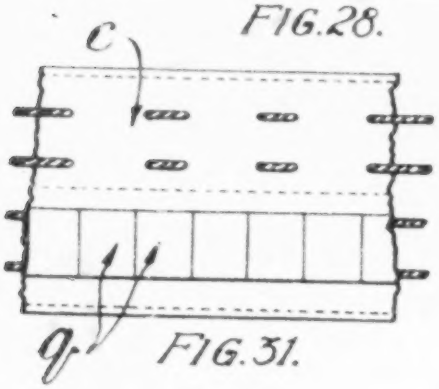

FIG. 31.

FIG. 32.

FIG. 30.

Inventor:
Roger French

By his Attorney:
Walter Gunn

Plaintiff's Exhibit 34

Aug. 12, 1941. R. FRENCH 2,252,070

CURTAIN AND THE LIKE AND MEANS FOR SUSPENDING SAME

Filed Aug. 17, 1938 4 Sheets-Sheet 4

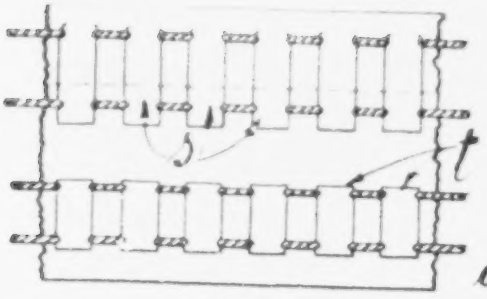

FIG. 33.

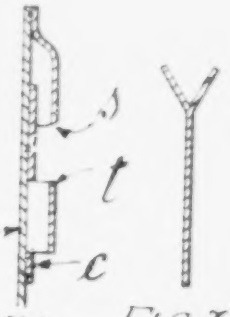

FIG. 34.

FIG. 36.

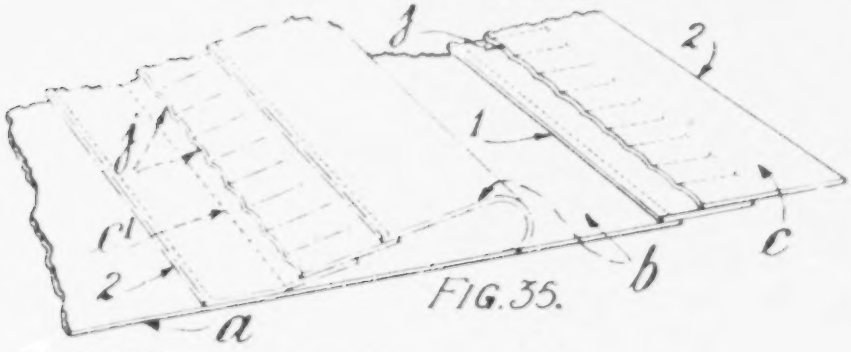

FIG. 35.

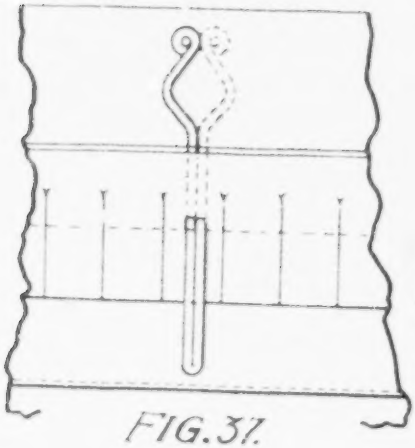

FIG. 37.

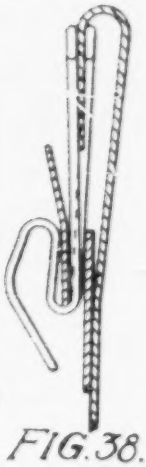

FIG. 38.

FIG. 42.

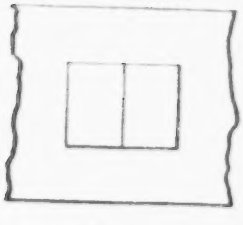

FIG. 39.

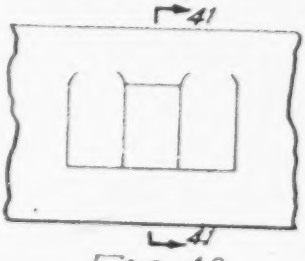

FIG. 40.

FIG. 41.

Inventor:
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Plaintiff's Exhibit 34

Patented Aug. 12, 1941 2,252,070

UNITED STATES PATENT OFFICE

2,252,070

CURTAIN AND THE LIKE AND MEANS FOR SUSPENDING SAME

Roger French, Manchester, England

Application August 17, 1938, Serial No. 225,265
In Great Britain August 20, 1937

8 Claims. (Cl. 156—10)

In the formation of the heading part of a curtain it is usual to fold down a short portion of the top part of the curtain fabric, and then secure the edge of the folded-down part to the curtain proper, a length of narrow tape being placed over the said edge part to cover the join and give a neat finish thereto. The upper edge of the tape is sewn to the said folded-down part, and the stitches pass through three thicknesses of material, or if a hem is formed along the edge of the curtain fabric, through four thicknesses, whilst the lower edge of the tape is sewn to the main or body part of the curtain, where the stitches have to pass through two thicknesses.

With such formation of heading, and for the purpose of facilitating easy suspension of the curtain, it is usual to provide a heading tape having on its front face "hook tubes" or loops, i. e. short straps joined at each end to the tape, which permit of suspension hooks being used adapted to engage the "hook tubes" or loops, the hooks passing up through each "hook tube" or loop at the bottom, and emerging at the top on the same side of the tape. Usually the heading tape is also provided with draw cords, for enabling the curtain and tape to be pleated.

With such known formation of curtain heading and known heading tape, there are several drawbacks. First, the formation of the heading is somewhat slow and liable to be inaccurate; secondly, it does not allow of even vertical pleating of the heading, i. e., pleating which extends throughout the full height or depth of the heading, and thirdly, the heading is liable to sag or hang over above the points of suspension unless supported by hooks with long upper extensions, passing up in front of, and sewn at their top ends to the heading. Tapes with holes in them for allowing the hooks to pass through and behind the tapes have been proposed, but owing to the upper row of stitching are not capable of passing into the heading. It may here be pointed out that it was owing to such drawback, i. e. the hooks meeting the upper row of stitching, that the open-ended "hook tubes" were proposed, which allow the hooks to extend upwards to any height but outside the heading.

The main objects of this invention are first to form the heading of a curtain or the like, composed of a length of heading tape in addition to the curtain material, in a manner that facilitates the easy, quick and accurate formation of the heading, and secondly, to provide a construction of heading tape which permits of the use of suspension hooks, parts of which will pass through and behind the heading tape without obstruction of the upper row of stitching, and, extending into the heading, serve to hold the heading erect. A further object is a construction of heading, and the application of a pleating tape thereto which allows of more even pleating, and pleating which extends throughout the depth of the heading.

According to the first part of the invention, the heading tape is sewn to the curtain proper so as to form an integral part of the heading, and either as a portion of one side of the heading, or as the whole or major part of one side, one (the upper) edge of the tape being in no way directly connected to the main or body part of the curtain.

In one example of the invention, the lower edge or part of the tape is sewn to the body part of the curtain, and the upper edge of the tape is sewn to the edge only of the folded-down part of the curtain, and not to the body part of the curtain. In another example, the tape is sewn along its lower edge, and along a point (or points) about the middle of its width, or slightly below such middle part to the body part of the curtain, and along its upper edge is sewn to the edge of the folded-down part of the curtain, and not to the body part of the curtain.

In a further example, the tape, made to a wider width, is sewn along its lower part to the body portion of the curtain as in example one or two, and along its upper edge is sewn to the extreme top part of the curtain.

In each example, the sewing will be through two thicknesses only, unless the edge of the curtain is hemmed to avoid a raw edge, when there will be at most three thicknesses. In all cases, the top edge of the tape will not be sewn to the body part of the curtain, i. e. to any part of the curtain below the top of the heading, and thus allow of more even and vertical pleating when the tape is provided with drawcords for pleating purposes.

According to the second part of the invention, the tape is formed with hook-tubes, or openings, at uniform intervals, and close together, or otherwise, throughout its length, which open on to the opposite sides of the tape, and thereby allow of the long vertical stem parts of curtain hooks or stiffeners to pass through the tape and up into the heading, and thereby hold the heading erect, without any sewing of the hooks or stiffeners to the heading. In the case of heading tape extending from the top edge of the curtain, and forming the whole, or major portion of one side of the heading, the hook-tubes may extend to the top edge of the tape and be closed at their top ends, in which case the hook stems will hold the heading erect by fitting the hook-tubes almost to the top ends. In addition to the aforesaid hook-tubes or openings, the tape may be provided at spaced intervals with ordinary hook-tubes opening top and bottom on to the same side of the tape for allowing of ordinary "turn-over" hooks being used, in addition to the afore-

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said hooks with long stem parts, or for allowing of the said stem parts passing first through an ordinary hook-tube and then through one of the hook-tubes opening on to both sides of the tape, or closed at the top end.

In addition to the suspension hooks or stiffeners being used to support the curtain, or hold the heading erect, they may be used to hold the folded-down part of the curtain and the top of the tape in the required positions for forming the heading.

When the tape and heading require to be pleated, the tape will be provided with one or more drawcords.

The invention will now be described with reference to the accompanying drawings, wherein:

Fig. 1 is a front perspective view of one example of the improved curtain or like heading.

Fig. 2 is a like view of a further example, and

Fig. 3 is a similar view of a third example.

Fig. 4 is a geometric face view, and

Fig. 5 is a cross section of a portion of one example of heading tape suitable for carrying out the second part of the invention.

Figs. 6 and 7 are like views of a portion of another example of such tape.

Figs. 8 and 9, 10 and 11, 12 and 13, and 14 and 15 are face and sectional views respectively of portions of further examples of tape.

Figs. 16 and 17 are face and sectional views of a portion of an example of tape mainly suitable for use with the form of heading shown in Figs. 2 and 3.

Fig. 18 is a further cross section of Fig. 16 and shows the application of a hook thereto having a part adapted to extend up into the heading and hold it erect.

Fig. 19 shows the same hook separately from the heading.

Figs. 20 and 21 are perspective views of two further examples of hooks suitable for use with the improved heading.

Fig. 22 is a perspective face view of a heading support (stiffener) as distinct from a hook, the prongs of the support (stiffener) being designed to pass through two side-by-side hook-tubes and grip the intermediate parts of the tubes.

Fig. 23 is a side view of a combined curtain ring and hook.

Fig. 24 is a face view, and Fig. 25 a cross section of another example of the tape.

Fig. 26 is a face view, and

Fig. 27 a cross section of a portion of a tape made so as to allow of being applied either way up.

Fig. 28 is a face view, and

Fig. 29 is a cross section, on line 29—29 of Fig. 28, of a portion of another example of a reversible tape, i. e. adapted to be applied any way up, either side.

Fig. 30 is a cross section of tape with the hook-tubes on the inner face of the tape, i. e., next the curtain.

Figs. 31, 32, and 33 and 34 are face and sectional views respectively of portions of two further examples of the tape.

Fig. 35 is a perspective view of a curtain prior to the top part being folded down or over to form the heading, and of the heading tape (Fig. 16) with one edge laid over the edge of the curtain material prior to and after sewing the same thereto, the dotted lines showing the curtain after being folded over, and also showing the tape in position for its other or lower edge to be sewn to the body part of the curtain.

Fig. 36 is a cross section of the upper edge part of the tape bifurcated to allow it to embrace the edge of the folded-down part of the curtain and give a neat finish thereto.

Fig. 37 is a face view, and

Fig. 38 is a cross section of a portion of a heading constructed according to a further example.

Fig. 39 is a face view of a portion of tape made according to a further example.

Fig. 40 is a face view, and

Fig. 41 is a cross section of a portion of still another example of the tape.

Fig. 42 is a front perspective view of a hook suitable for use with the tape shown in Figs. 40 and 41.

In Fig. 1 *a* is the main part of the curtain, and *b* the folded-down upper part of the curtain material. *c* is the heading tape secured (sewn) to the edge of the folded-down curtain material *b* along one edge, and secured (sewn) to the main part of the curtain *a* along its other edge, the tape *c*, the folded-down part *b* and a portion of the main part *a* of the curtain collectively forming the heading.

In Fig. 2 *a* is the main part of the curtain and *b* the folded-down upper part of the curtain. *c* is the heading tape, but instead of being secured (sewn) to the curtain along its upper and lower edges only, it is also secured (sewn) to the body part of the curtain at a point c^1 intermediate of such edges, and for such reason will preferably be slightly wider than the heading tape shown in Fig. 1.

In Fig. 3 *a* is the curtain but having no folded-down part or only a small folded-down part at its upper edge, to avoid leaving a raw or uneven edge. The heading tape *c* is secured (sewn) along one edge to the said upper edge of the curtain and to the body part of the curtain along its lower edge and also, if desired, at a point away from such lower edge, the tape then forming one side of the curtain heading.

In each example, the tape *c* may have drawcords, or be without drawcords. It may also be plain and adapted for suspension by means of sew-on rings. Usually, however, it will be formed with hook-tubes, slots or eyelets spaced at suitable distances apart and adapted to allow of being directly suspended by suspension hooks. Some or all of the hook-tubes will open on to both sides of the tape and some may open only top and bottom on the same side of the tape.

In Fig. 4 the tape is shown provided with a row of side-by-side hook-tubes *d*, the tape being formed as two thicknesses joined to each other at intervals, and the edges of one thickness lying below those of the other thickness (stepped), and the two thicknesses collectively providing the hook-tubes *d* for the passage of the suspension hooks into the interior of the curtain heading. The tape is secured by its edge **1** to the edge of the folded-down part *l* of the curtain material and by its edge **2** to the main part *a* of the curtain, see Figs. 2 and 35.

In Figs. 6 and 7, the tape is provided with a central row of slits or eyelet holes, and is applied to the curtain in like manner to the tape shown in Fig. 4.

In Figs. 8 and 9 the tape is formed with hook-tubes *e*, *e*, and behind each hook-tube strap the tape proper is formed with a slot or opening *f*. This make of tape allows of a suspension hook passing through the hook-tube and via the opening to the rear of the tape, and, therefore, into the

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curtain heading. It also allows of ordinary suspension hooks being used, which engage only the front strap of the hook-tube.

In Figs. 10 and 11 the tape is formed with like open-backed hook-tubes *e*, *e*, in its lower part, and with pairs of slits or openings *g*, *g* in its upper part, whereby hooks with long stems may enter the heading via the hook-tubes, and the usual "turn-over" or like hooks may engage the pairs of openings *g*, *g*, or vice versa.

In Figs. 12 and 13 the tape is formed with hook-tubes *h*, *h* in its upper part, each hook-tube at its lower end opening on to the front side of the tape, and at its upper end being closed on the front side, but opening on the rear side of the tape. Intermediate of the hook-tubes *h* are ordinary open-ended hook-tubes h^1, for ordinary hooks to engage.

In Figs. 14 and 15 the tape is formed with slits or openings *i* in its upper part, and hook-tubes *e* in its lower part, these latter being either open-backed as in Figs. 9 and 11, or merely open top and bottom.

In Figs. 16 and 17, the tape is of like construction to the tape shown in Figs. 4 and 5, being composed of two thicknesses and one thickness stepped in relation to the other. In this example, however, the lower thickness is wider than the upper thickness, and the hook-tubes *j* are formed near to the upper edge of the tape, whilst the lower and wider part of the tape is left plain, except for the drawcords when these are provided. In this latter connection, in order to cause the hook-tube straps to stand away from the tape proper and thus facilitate insertion of the hooks, the drawcords may be applied to both the upper and lower parts of the tape, and in a manner such that on pleating the tape, the hook-tubes in the upper part of the tape will lie opposite the pleat channels of such part, and in line with the pleat channels of the lower part, the cords in the upper part passing through and behind each hook-tube strap, and the cords in the lower part passing in front of the tape at points directly opposite the hook-tube straps. This example of tape allows of very effective pleating of the tape throughout its full width or depth, and in addition, helps to give continuity and uprightness to the pleats of the heading as a whole. This example of tape also allows of being secured to the curtain along its two edges, and also at a point in its width as in Fig. 2. In Fig. 18, this example of tape is shown applied to a curtain and the same view shows the application thereto of a suspension hook *k* having an upwardly extending rear stem part k^1, which may be threaded through any of the hook-tubes and pass into the interior of the heading, where it reaches to the upper fold of the heading and serves to prevent the heading sagging or falling over. The hook may be of any desired construction, but that shown is composed of a length of wire folded upon itself and also bent to form the hook proper, and at the top end of the stem part shaped as shown in Fig. 19. With the hook-tubes arranged side-by-side (Fig. 4), the hook is adapted to engage any two hook-tubes and grip the intervening walls of the hook-tubes, also grip the front straps of the hook-tubes between its front and rear parts, and thereby prevent accidental falling out.

In Fig. 20, the hook shown is made of flat strip metal, folded upon itself to provide the front hook part and the rear vertical stem part. In Fig. 21 the hook shown is made of wire, folded to form the front hook part and the rear vertical stem part, this latter being flattened at its top end. In each example of hook, the same is formed so as to also grip the front wall of the hook-tube. Instead of being made of strip metal, the hook shown in Fig. 20 may be made of wire.

In addition to the hooks for supporting the curtain, wire stiffeners or supports *n*, see, for example, Fig. 22, may be provided, these passing up through the hook-tubes and at their upper ends extending into the heading for the purpose of holding the heading erect, and at their lower parts gripping the front wall of the hook-tubes. Instead of using hooks, curtain rings *m* with vertical stem parts *n* may be used. See Fig. 23. In this case also, the front part of the hook-tube is gripped between the ring and stem parts after being applied to the tape.

In Figs. 24 and 25, the tape is formed with long hook-tubes *o* in the upper part of the tape and short hook-tubes *p* in the lower part, the former opening on to the rear side of the tape and the latter opening at both ends on the same front side of the tape. The hook-tubes *o* and *p* may be in line with each other, or they may be staggered, as shown. When in line a hook with long stem part may engage both hook-tubes, but when not in line, a hook with long stem part may engage each hook-tube *o*, and an ordinary short hook engage each hook-tube *p*. Of course, the lower row of hook-tubes may be omitted.

In Figs. 26 and 27, the tape shown is composed of three thicknesses *c*1, *c*2, *c*3, joined at intervals by vertical connections to produce open-ended hook-tube passages through the tape, the arrangement of the thicknesses and passages allowing of the tape being applied either way up on one side between the folded down part (or upper edge) of the curtain and the main part of the curtain.

In Figs. 28 and 29, a similar make of tape is shown but with the thicknesses arranged so that the tape may be applied any way up on either side, and still allow the hooks to pass into the curtain heading. In this construction of tape alternate pairs of hook-tubes, o^1, o^2, open at their upper ends on to the rear side of the tape and at their lower ends open on to the front side of the tape, whilst the intermediate pairs of hook-tubes open at their top ends onto the front side of the tape and at their lower ends open on to the rear side of the tape, the two thicknesses of the tape forming the strap portions of the hook-tubes and the tape proper being woven and united to suit.

In Fig. 30 the tape is formed so to have the hook-tube passages on the inner face of the tape. In the case of a heading made according to Fig. 3, the top part of the curtain may extend down in front of the heading to form a valance as shown in Fig. 30.

In Figs. 31 and 32, a row of side-by-side ordinary hook-tubes *q* is applied to the lower part of the tape, and drawcords *r*, *r* are applied to both the lower and upper part.

In Figs. 33 and 34, a row of hook-tubes *s* open at their lower ends, but closed at their upper ends, is applied to the upper part of the tape, also drawcords, and a row of ordinary hook-tubes *t* (opening on to the front side of the tape, top and bottom) is applied to the lower part of the tape, this construction of tape being mainly useful with the construction of hook shown in Fig. 20.

The invention is equally applicable to curtain valances, portiere rod curtains and the like.

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As shown in Fig. 36, the top part of the tape may be bifurcated and serve to enclose the raw edge of the top part of the curtain.

As shown in Figs. 37 and 38, the folded-down part of the curtain may be secured in position relatively to the top part of the curtain by means of the suspension hooks (Fig. 19), or by means of the stiffeners (Fig. 22) the stems of the hooks, or stiffeners, after passing through the tape, gripping the lower edge part of the folded-down portion of the curtain. Instead of the twin thicknesses of wire lying in a plane parallel with the tape, they may lie in a plane at right angles thereto, in order the better to grip the curtain material.

In Fig. 39 the tape is shown with twin side-by-side hook-tubes, with openings in the tape behind the hook-tubes or otherwise, according as the hooks require to pass into the heading, or in front of the heading.

In Figs. 40 and 41 the tape is formed with groups of three side-by-side hook-tubes and with an opening in the tape behind the central hook-tube, so that on application of a hook like that shown in Fig. 42 the stem part may pass up the central hook-tube into the heading via the opening in the tape, whilst the lateral group of the hooks may engage the two outer hook-tubes from their lower open ends. Alternatively an ordinary twin-over hook with lateral prongs may engage all three hook-tubes from their lower ends and extend through their upper ends in front of the tape.

The improved heading is not limited to any particular make of tape, or arrangement of hook-tubes or openings in the tape, and it must be understood that any make of tape having hook-tubes, loops or openings may be employed allowing of the use of suspension hooks in the manner described.

By using the tape to form part of one side, or the whole or major part of one side of the curtain heading, a saving of curtain material is effected, and by using the tape to form part of the heading, and hooks to engage the heading up to its upper edge, the curtain heading is more effectually held erect. By there being only two thicknesses of material sewn together except in the case of a raw selvedge, where the tape is joined to the curtain, it will be appreciated that the pleating will be more uniform and pronounced throughout the whole depth of the heading than when three or four thicknesses are joined together, especially along the top edge of the tape. Also, by connecting the tape along its central part, as well as along its edges, the pleating of the tape ensures more pleasing and even pleating of the curtain, especially in the case of the tape extending to the top of the heading (Fig. 3) and with the rear stem parts of the hooks and stiffeners lying within the heading they are concealed from view.

What I claim is:

1. In a curtain having the upper edge thereof folded over on itself for a substantial distance along substantially the entire width thereof, a relatively narrow strip of tape having its upper edge stitched to said folded edge only of said curtain, the lower edge of said tape being stitched to the body only of said curtain along its width, said tape and folded portion in combination constituting a curtain heading providing a free pocket from the top of said curtain to the lower edge of said tape, the improvement which comprises at least one series of hook-tubes in said tape, the lower ends of said tubes adapted to open to the outside of said pocket and the upper ends adapted to open to the inside of said pocket.

2. In a curtain having the upper edge thereof folded over on itself for a substantial distance along substantially the entire width thereof, a relatively narrow strip of tape having its upper edge stitched to said folded edge only of said curtain, the lower edge of said tape being stitched to the body only of said curtain along its width, said tape and folded portion in combination constituting a curtain heading providing a free pocket from the top of said curtain to the lower edge of said tape, the improvement which comprises at least one series of hook-tubes in said tape, the lower ends of said tubes adapted to open to the outside of said pocket and the upper ends adapted to open to the inside of said pocket and a drawcord in said pocket.

3. In a curtain having the upper edge thereof folded over on itself for a substantial distance along substantially the entire width thereof, a relatively narrow strip of tape having its upper edge stitched to said folded edge only of said curtain, the lower edge of said tape being stitched to the body only of said curtain along its width, said tape and folded portion in combination constituting a curtain heading providing a free pocket from the top of said curtain to the lower edge of said tape, the improvement which comprises at least one series of hook-tubes in said tape, the lower ends of said tubes adapted to open to the outside of said pocket and the upper ends adapted to open to both the outside and the inside of said pocket.

4. A structure as claimed in claim 1, wherein the tape has an additional row of hook-tubes below the aforesaid hook-tubes, the latter hook-tubes opening on the front side of said tape.

5. A structure as claimed in claim 1, wherein the tape has an additional row of hook-tubes below the aforesaid hook-tubes, the latter hook-tubes opening on the front side of said tape, the hook-tubes of each row being spaced apart and the hook-tubes of the lower row being in alinement with the spaces between the tubes of the upper row.

6. A structure as claimed in claim 1 wherein the tape is formed with through hook-tubes by making the tape of two thicknesses, and one thickness lying in stepped relationship to the other, the two thicknesses being united vertically at intervals to form the hook-tubes, as herein set forth.

7. A structure as claimed in claim 1 wherein the tape is provided with hook-tubes, opening on to opposite sides of the tape, the tape being formed of three thicknesses lying in stepped relationship, the upper and lower being in alignment, the central thickness overlapping the others and being secured at intervals thereto to form the hook-tubes, as herein set forth.

8. A structure as claimed in claim 1 wherein the tape is formed with hook-tubes opening on to opposite sides of the tape, and certain of them being arranged with their upper ends opening on to one side of the tape, and certain others opening at their upper ends on to the other side, and thereby allowing of the tape being applied with either side edge up, as herein set forth.

ROGER FRENCH.

Plaintiff's Exhibit 3[illegible]

June 20, 1950 S. PERLMUTTER 2,512,376

DRAPEPY HOOK

Filed May 7, 1948

FIG. 1

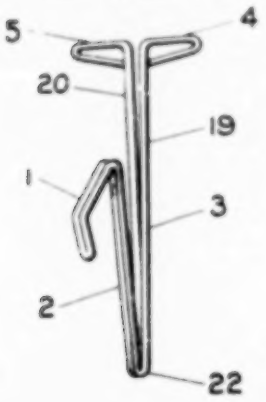


FIG. 2

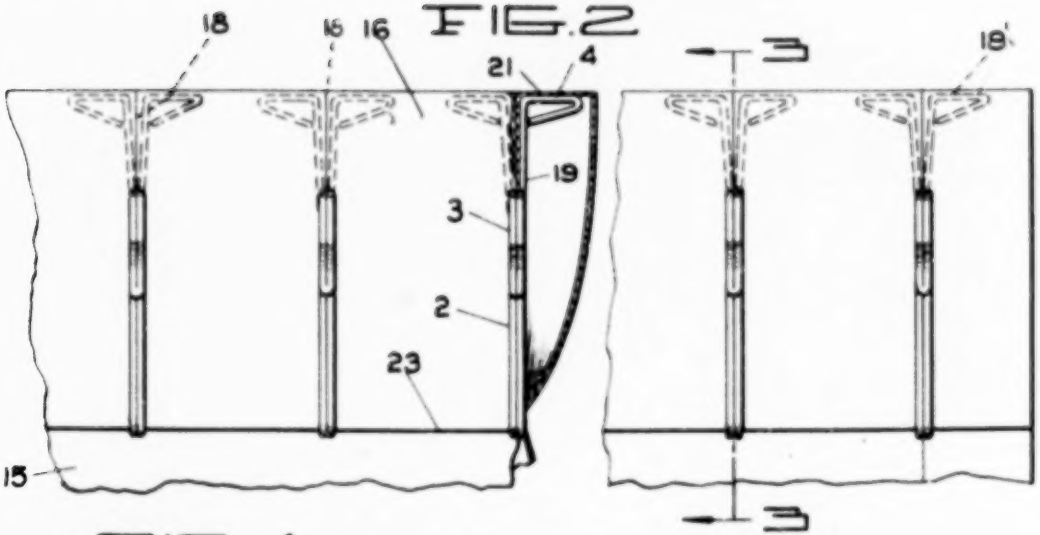


FIG. 4

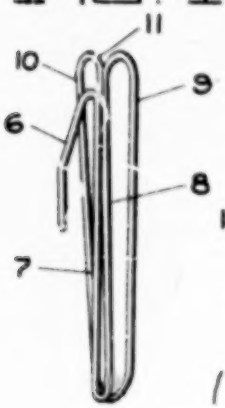


FIG. 5

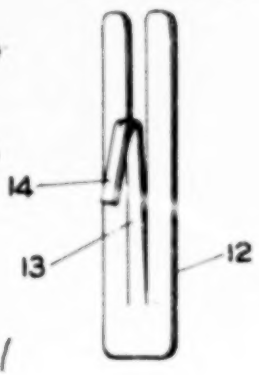
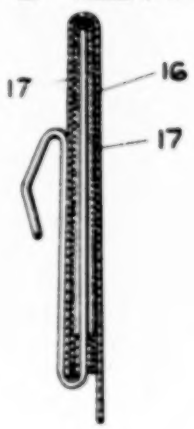


FIG. 3



INVENTOR.
Samuel Perlmutter
BY Ezekiel Wolf
his ATTORNEY

Patented June 20, 1950

2,512,376

Plaintiff's Exhibit 36

UNITED STATES PATENT OFFICE

2,512,376

DRAPERY HOOK

Samuel Perimutter, Newton, Mass.

Application May 7, 1948, Serial No. 25,732

1 Claim. (Cl. 160—386)

1

The present invention relates to a drapery hook and to the combination of a drapery hook and drapery construction with which the hook is used in hanging draperies.

Draperies for windows, open arches, etc. are frequently suspended by means of hooks, eyelets, or the like, supported from a rod, wire, or some type of fixture secured over the window or opening from which the drapery is to be hung. Great difficulty is sometimes encountered in hanging the draperies evenly and positioning ruffles or folds in a uniform or desired manner. This difficulty is brought on frequently because of the type of drapery used and because the pins cannot be accurately placed in the heading of the drapery to make the hooks all effectively line up in the right direction. Even an expert in hanging draperies finds some difficulty in lining up the hooks so that the drapery will hang level and not be up at one point and down at another point.

Another objection to the type of hooks commonly used is that they project outward from the drapery material and frequently destroy the continuity of the drapery lines at the top of the drapery. It is often for this reason that the drapery tops are covered over in the front by cornices and other decorations to hide the irregularity of the top of the drapery as it is suspended by hooks from rods and in other ways.

In the present invention the drapery head, or top, is so finished that with the use of the type of hook of the present invention substantially no effort is required to hang the drapery in the proper manner with the top aligned and suspended as it should be. In the present invention the top of the drapery is provided with a turned marginal portion which is tacked down to the body of the drapery, preferably at regularly spaced intervals, usually in a vertical direction. This tacking of the margin and the margin material itself serves to support the hook without penetrating the material providing a secure fastening means which remains in position and does not get out of place. These hooks are preferably spaced uniformly along the turned margin and also near the end edge of the drapery and provides a uniform suspension for the drapery along its whole length.

Without further describing the merits and advantages of the present invention, the invention will be described in connection with an embodiment thereof, illustrated by the drawings in which Figure 1 shows one form of the hook of the present invention in a perspective view. Figure 2 shows the top of a drapery with parts

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in fragmentary section illustrating the hook and its position in relation to the top of the drapery. Figure 3 shows a section taken on the line 3—3 of Figure 2 and Figures 4—5 show in perspective modifications of the hook of Figure 1.

The hook shown in Figure 1 comprises a hook portion, 1, with a downwardly extending stem 2, and upwardly extended stem, or shank, 3, joined to stem 2, the shank 3 terminated at the end by a pair of loops, 4 and 5. In the arrangement indicated in Figure 1 the hook may be made of a single wire which is doubled in the portions 1 and 2 with the wire branches close together or touching one another, and both following the same shape. The doubled wire shank, 3, forms a very narrow or thin V with the stem 2, with the lower portions of the stem 2, and the shank 3, substantially in juxtaposition to each other. The loops 4 and 5 bend outwardly substantially at right angles to the wires 3 and form with the wires, 3, a substantial T shape figure. The wire portions 3—2 and 1 are substantially aligned in position on the drapery head or perpendicular to the plane of the drapery.

In the construction of the modifications of Figures 4 and 5 the same general purpose is obtained in somewhat a different fashion. The hook of Figure 4 has a single wire hook portion 6, with a single wire downwardly extending stem, 7, and an upward portion 8, which continues into a V shaped loop with sides 9 and 10 terminating with an inwardly bent end 11, lying adjacent the upward member 8. The loop formed by the elements 9, 10, 11, lies in a plane at an angle or perpendicular to the hook portion and have their inner arms close or touching each other. In the arrangement indicated in Figure 5, the pin or hook may be formed from a flat piece of material, 12, by bending a tongue, 13, with a hooked end, 14, out of a central section of the piece 12. In this structure the tongue 13 is sufficiently flexible so that it may be moved away from the piece 12, or is permanently positioned away from the piece 12 forward of it, as shown in Figure 5, to allow for the thickness of the turned margin at the top of the drapery.

Figures 2 and 3 show how the hook of Figure 1 is used in connection with the drapery. The drapery 15 is provided with a turned marginal top, 16, forming a border for the top of the drapery. The turned in border is on the inside, or what may be called the "wall side" of the drapery. The margin 16 may be of the same material as of the rest of the drapery or of different material and may be joined at the drapery either by being

Plaintiff's Exhibit 36

an integral part of it or by stitching at the top edge.

The margin 16 may be faced on the inside with some buckram material or some other stiffening material, 17, to make the margin, 16, stiff. This margin is tacked down by vertical stitching, 18, preferably running up and down to the body of the drapery, the stitching being spaced preferably at equal intervals along the margin, except that at the end of the drapery an additional line of stitching, 18', is provided so that a hook may be placed as near to the ends of the drapery as possible.

The hook of Figure 1 is inserted between the turned margin of the drapery and the body of the drapery itself, with the stitching going between the two shank elements, 19 and 20, and the stem, 2, of the hook lying against the outer surface of the turned margin, 16, and the shank 3, on the inner face of the margin. The hook is preferably of such a length that the top loops, 4 and 5, bear against the folded section 21, between the margin and the front of the drapery. The shank 3, and the stem 2, may, if desired, have their junction, or bend, 22, below the lower edge, 23, of the turned margin.

The stem 2 and the shank 3 may be practically touching one another with enough spring between the two parts to grip the turned margin when inserted. If the hook is constructed with this provision, it is possible to eliminate the upper loops 4 and 5, but for the most part it is preferable to have the loop ends, 4 and 5, lie against the top fold, or crease, between the margin and the body of the drapery.

The hook itself may be made of suitable material such as brass, iron, plastic, or other durable material and may be in the form of a wire, as indicated in Figures 1 and 4, the construction of Figure 1 being preferred, or, as indicated in Figure 5, in the form of a flat sheet which may be stamped and formed to the shape and construction as described above.

The hooks of Figures 4 and 5 are inserted in similar relationship to the drapery as the hook of Figure 1. In each case the hook element will be positioned on the outer side of the turned margin and be spaced from the top by the depth of the margin, while the locations of the hooks will be determined by the sewed or tacked up and down seams. By placing a seam, 18', near the ends of the drapery, a hook may be attached near the end of the drapery so that it is possible to keep the ends in position in the same manner that the rest of the drapery is kept in position.

The method of the present invention of supporting and hanging the drapery not only makes

it possible to level the drapery evenly on the supporting rods or brackets without any effort, but also insures the material from being injured in any way, since there are no pointed ends to pierce the material, nor are any pins used for supporting the hooks. The present construction does not in any way interfere with the style or design that the front of the drapery may have. If desired, the margin may be formed in tucks or pleats and ruffles or any other type of hanging or draping may be used. The construction may also be applied to heavy lined drapes of any kind of materials, as well as to thin, unlined, hanging curtains and draperies of silk or other description. The hooks are so firmly fixed to the draperies that drawstrings may be used for opening or closing the drapery on the rods in the usual fashion.

Having described my invention, I now claim:

In combination with a drapery having a top turned down margin sewed to the body of the drapery at spaced intervals in up and down lines, a hook for hanging the same formed of wire having two free straight substantially touching elements extending downward adapted to press one on either side of the up and down line of sewing between the turned down margin and the drapery, means supporting the wires together in said free touching relation, and a further wire element extending from the lower end of said first elements upwards in substantially parallel relation thereto with a sufficient inclination towards the first two wires to make contact substantially with each of the first two wires toward the top ends thereof, said further wire having a hook element formed at its end extending away from the place of contact with the other two wires, whereby said further wire will press on said margin on the outside along the line of sewing and against said first two wires with the hook element extending outward of the face of the margin when the hook is in position on the drapery.

SAMUEL PERLMUTTER.

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The following references are of record in the file of this patent:

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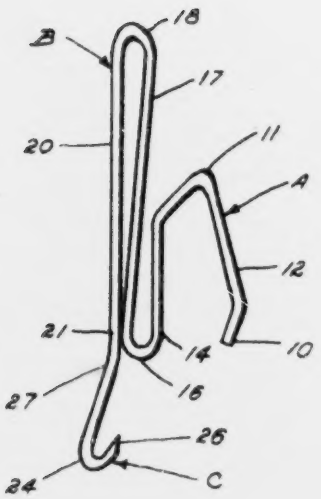
Number	Country	Date
381,198	Great Britain	Sept. 23, 1932

Plaintiff's Exhibit 37 265

Oct. 3, 1950 B. P. SOLOMON 2,524,403

DRAPERY HANGER

Filed May 12, 1949



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Plaintiff's Exhibit 37

UNITED STATES PATENT OFFICE

2,524,403

DRAPERY HANGER

Bert P. Solomon, Detroit, Mich.

Application May 12, 1949, Serial No. 92,883

1 Claim. (Cl. 24—81)

1

This application relates to drapery hangers useful in hanging draperies on rods or supports.

A primary object of the present invention is to provide a drapery hanger in the form of a single length of wire which may be bent to provide several major members as follows: A bottom opening U-shaped hook member which hooks over the drape rod; a bottom opening U-shaped clip which grips the upper edge of a drape; and finally, an upwardly projecting hooking pin member which hooks the drape to the hanger and thus supports the drape.

A supplementary object of the present invention is to provide a drapery hanger having the three aforementioned members all made from one integral length of wire bent to provide such members.

A still further object is to form the parts in such a way that when the hanger is applied to a drape, the hooking pin member thereof will not snag the drape as the hanger clip is slid downwardly with the drape inside the clip.

An embodiment of the invention has been constructed and is disclosed in the single figure of the appended drawing.

The drapery hanger hereof is in the form of a single length of wire having numerous bends as follows. Starting with the right end 10 of the wire, the first major bend is at 11 so that portions 12 and 14 together define a botom opening U-shaped hook member A for supporting the hanger on a drape supporting rod. The next major bend is at 16 where the lower end of the portion 14 is formed as a return bend extension 17 which itself is bent again at 18 to provide another return bend extension 20. Portions 17 and 20 engage at 21 and together form a bottom opening U-shaped clip member B inside which may be passed the upper edge portion of a drape.

A fourth major bend at 24 provides still another return bend extension forming a short wire hooking pin C having a sharpened free end or point 26 which may be passed through the drape so as to hook the hanger as a whole to the drape and thus support it.

The lower part of the return bend extension 20 is offset as shown at 27 so that the pin C is

2

offset in order that its end 26 be forward of the plane between the return bend extensions 17—20, inside clip B, whereby pin end 26 will not snag the drape as the hanger is being mounted thereon by sliding the clip B down upon the upper edge of a drape inside the clip.

It will be observed that the hanger here shown is made of a single piece of wire bent to provide the portions 12—14 (hook A), and 17—20 (clip B), and the hooking pin (C).

Now having described the drapery hanger herein disclosed, reference should be had to the claim which follows.

I claim:

A drapery hanger comprising a single length of wire having several portions defining several major members as follows: first and second portions defining an open bottom U-shaped hook member, third and fourth portions defining an open bottom U-shaped clip member, these portions engaging each other near their lower ends to provide a drapery grip means, and a fifth section in the form of an upwardly projecting hooking pin member, with the five sections being integral and with the trailing end of one portion defining the leading end of the next higher numbered portion, the lower end of the fourth section being forwardly bent and thus offsetting the hooking pin member so that its upper end is forward of a plane inside the clip member, between the third and fourth sections, behind which plane is the third section and the hook member defined by the first and second sections.

BERT P. SOLOMON.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
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1,841,061	Sarkisian	Jan. 12, 1932
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Plaintiff's Exhibit 38

May 15, 1951 S. PERLMUTTER 2,553,272

DRAPERY HOOK

Filed Oct. 20, 1949

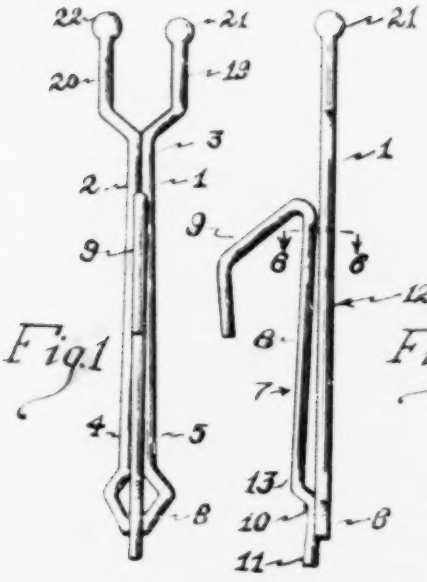

Fig.1

Fig.2

Fig.5

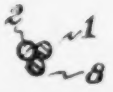

Fig. 6

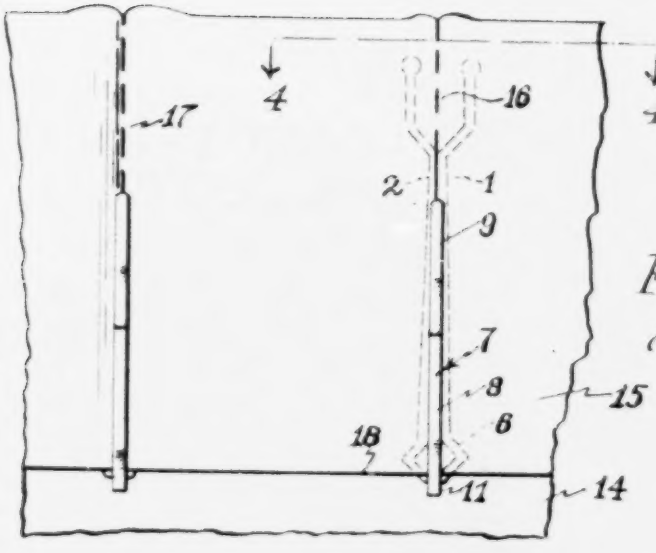

Fig.3

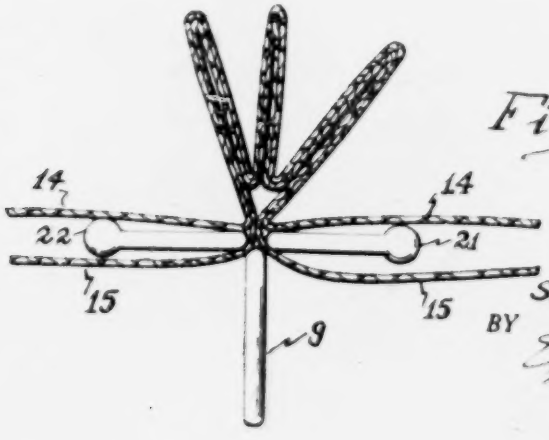

Fig. 4

INVENTOR.
Samuel Perlmutter
BY
Ezekiel Wolf
his Attorney

Patented May 15, 1951

2,553,272

UNITED STATES PATENT OFFICE

2,553,272

DRAPERY HOOK

Samuel Perlmutter, Newton, Mass.

Application October 20, 1949, Serial No. 122,427

3 Claims. (Cl. 24—84)

1

The present invention relates to a drapery hook and more particularly to the type of drapery hook which has been claimed and described in my prior application, Serial No. 25,732, filed May 7, 1948, now Patent No. 2,512,376, issued June 20, 1950. The present invention is an improvement on the hook disclosed in the above-mentioned application, particularly in regard to the stiffness of its spring structure due to its particular construction. As described in my prior application, the hook of the present type is exclusively applied to draperies which have a folded-over border or hem at the top edge which is stitched down at intervals in an up-and-down direction from the top of the drapery to the end of the hem, thus leaving the hem open at its bottom end held down only by the series of parallel lines of stitching transverse to the length of the hem.

The hook disclosed in the present invention and that used in the prior application is inserted between this turned-over marginal hem and the back of the drapery face with one branch of the hook on one side of a hem and the other branch of the hook on the other side of the same hem. I have found that in order for a drapery hook of the type herein described to hold the material of the drapery efficiently, it must be not only substantially rigid to distortion but also there must be a clamping action by the hook which will bear quite tightly against the turned-over margin or hem at the up-and-down line of stitching, so that the face of the drapery will not fall or pull forward from the hook. If the clamping action is not secure, there is a tendency for the arms of the hook on either side of the line of stitching to be pulled away from the line of stitching which means that the front face of the drapery will bulge forward at this point. This action tends to make the drapery hang unevenly and also to bulge out in spots where the hooks are attached. The hook disclosed in the present invention overcomes this difficulty and provides the necessary clamping action which clamps the hook right at the line of stitching and since the stitching goes through the front face of the drapery, the front face of the drapery is held tightly to the hook in the proper direction at this point.

Without further describing the merits and advantages of the present invention, the invention will be described in the specification below in connection with the drawings illustrating an embodiment thereof in which:

Figure 1 shows a front elevation of the drapery hook of the present invention.

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Figure 2 shows a side elevation of the drapery hook.

Figure 3 shows a drapery hook as applied to a drapery shown in fragmentary view.

Figure 4 shows a section taken on the line 4—4 of Figure 3.

Figure 5 shows a modification of a detail of the hook shown in Figures 1 to 4, and Figure 6 shows a section taken on the line 6—6 of Figure 2.

In the arrangement shown in Figures 1 to 4, the drapery hook comprises a wire or rod formed with two substantially coextending branches 1 and 2 which abut one another in their top section 3 on the inner side of each of the branches and which at their lower ends 4 and 5 are spaced apart slightly. The base of the branches 1 and 2 are formed into a loop 6. The elements 1 and 2 and the loop 6 are preferably all formed of a single wire or rod and lie substantially in the same plane. The wire or rod is of metal and while comparatively stiff provides an inward spring pressure at the abutting portion 3 so that while it may be opened up slightly in the section 3, the tendency is for the branches or arms 1 and 2 to press firmly against one another in this section. The loop 6 is shown as substantially rectangular in form but a rounded or other type of loop may be used in the same position as the loop shown, provided the two branches 1 and 2 are tensioned towards one another along a substantial section of their upper portions.

To one face of the loop at its center line, there is welded a hook member 7. This hook member 7 is formed from a wire or rod similar in thickness and of the same metal used for the rest of the hook. This hook member comprises a long straight stem or shank section 8 with a top hooked or curved section 9 which is bent backwards away from the branches 1 and 2 to form a hook as shown in Figure 2. The lower end of the section 8 has a sharp angular bend at 10 terminating in a short downwardly extending section 11 which comes to the face of the center of the loop where it is welded to the loop. The arrangement of the hook member 7 is such that it is positioned substantially in a plane perpendicular to the plane in which the arms 1 and 2 and the loop 6 lie. This plane occupied by the hook member 7 is also symmetrical with the branches 1 and 2 and the loop 6. The elements 1 and 2 and most of the loop 6 which lie on the inside of the hem may be called a support 12 supporting the hook element 7 which lies against the outer face of the hem. The angular element 10 spaces the arm 8 at its lower end 13 away from the arms

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1 and 2, but towards the upper end of the arm 8 the arm practically lies in the tangential relation to both arms 1 and 2.

Figure 2 shows the arm 8 in its upper region spaced slightly away from the arms 1 and 2 but I prefer to have the arm 8 tangent to both elements 1 and 2 as shown in Figure 6 which corresponds substantially to the section 6—6 of Figure 2 except that there the arms 1 and 2 as shown are not quite tangential to the arm 8. The arm 8 may occupy either relation depending upon the tension desired on the drapery which is also dependent upon the thickness of the drapery. With very heavy drapery, it may be desirable to provide a slight spacing between the arm 8 and the arms 1 and 2 but in most cases, the resiliency of the arm 8 will be sufficient to provide for the thickness of the drapery material so that no initial spacing of the arm 8 from the arms 1 and 2 need be made. By welding the short end section 11 to the face of the loop 6 with the arm 8 of the hook directed inwardly to an abutting position of the supporting arms or branches 1 and 2, the hook will be provided with a strong spring tension force so that the necessary strain to separate the top of the arm 8 from the arms 1 and 2 will be substantial for the separation corresponding to the thickness of the hem.

A hook such as shown in Figures 1 and 2 when applied to a drapery will firmly hold the drapery as indicated in Figures 3 and 4. The drapery here comprises the facing or drapery proper 14, the turned-over hem, or border 15 with the transverse stitching in up-and-down parallel lines shown by stitching lines 16 and 17. As has been described, the hook is inserted in the drapery with the arms 1 and 2 between the facing 12 and the turned-over end 15, the arm 1 being positioned on one side and the arm 2 on the other side of the stitching. The hook element 7 is on the outside of the margin 15 with the arm 8 pressing against the material 15 compressing it against the arms 1 and 2 on the inside of the margin and centrally along the line of stitching 16 and 17. The lower end of the hook where the section 11 is welded to the loop 6 will rest against the edge 18 of the hem and in fact, the section 11 may dip inwardly into the plane of the loop as indicated in Figure 2. This itself tends to clamp the lower end of the hem of the material and to prevent the hook from working up and down since the material must pass between the inner side of the angle section 10 and the upper corner of the loop.

The hook of the present invention when once put in place holds tightly to the material and it is not easy to draw the hook out and impossible for the hook to swing from side to side.

In order to avoid sharp ends on the supporting arms 1 and 2, the upper sections may be separated as a fork with upwardly extending tines 19 and 20 which may be capped by rounded or spherical ends 21 and 22 respectively. The ends of the supporting arms 1 and 2 may also be terminated as indicated in Figure 5 where the arms 1 and 2 are merely spaced further apart as indicated at 23 and 24 and terminated in smooth loops 25 and 26 respectively lying in the same plane as the rest of the support 12. Other useful constructions of the terminating end supports may be used and if it is desired to have the upper end of the hook run to the top of the hem as indicated in the prior application, then a termination such as shown in Figure 5 of the present application or Figure 1 of the prior application may well be used.

Having described my invention, I now claim:

1. A drapery hook comprising a stiff wire formed into a small loop in the midsection of the wire with ends extending from the loop at each side and to a substantially contacting position with one another in the section away from the loop, said loop and ends lying in a common plane, a hook member having a hooked section with a stem extending therefrom in a direction longitudinally with said end extensions of the loop, said stem at its end having a turned in section abutting the bottom of the loop wherein the stem is welded to the loop, said stem lying substantially in a plane perpendicular to said common plane and including the line of contact between said end extensions of said loop, said stem being directed towards said line of contact and said hooked section away from said line of contact.

2. A drapery hook formed of stiff wire comprising a support constituted of two substantially contacting arms joined at their base by a loop integral with the arms, said loop and said arms lying in a common plane, a hook having a shank terminating in an inwardly offset section abutting and welded to the lower side of the loop in a line symmetrical with the support, said offset section being inclined and extending into the plane of the loop and said shank being of resilient metal and inclined to contact substantially with each of said contact arms on each side of their contact with each other whereby a drapery having a hem joined together by a line of transverse stitching may be held between three substantially parallel lines of contact.

3. A drapery hook formed of stiff wire comprising a support constituted of two substantially parallel opposed arms joined integrally together at their base through a loop of which the arms are an extension of the open side of the loop and in substantially the same plane as said loop, said arms being closely spaced from one another in a section away from the loop, a hook having a shank terminating in an inwardly bent section offsetting the lower end of the shank from said loop to which said inwardly bent section is welded, said shank being inclined towards said arms in its upper section near the hook in a position symmetrical with said opposed arms with the hook portion extending away from said arms

SAMUEL PERLMUTTER.

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Number	Name	Date
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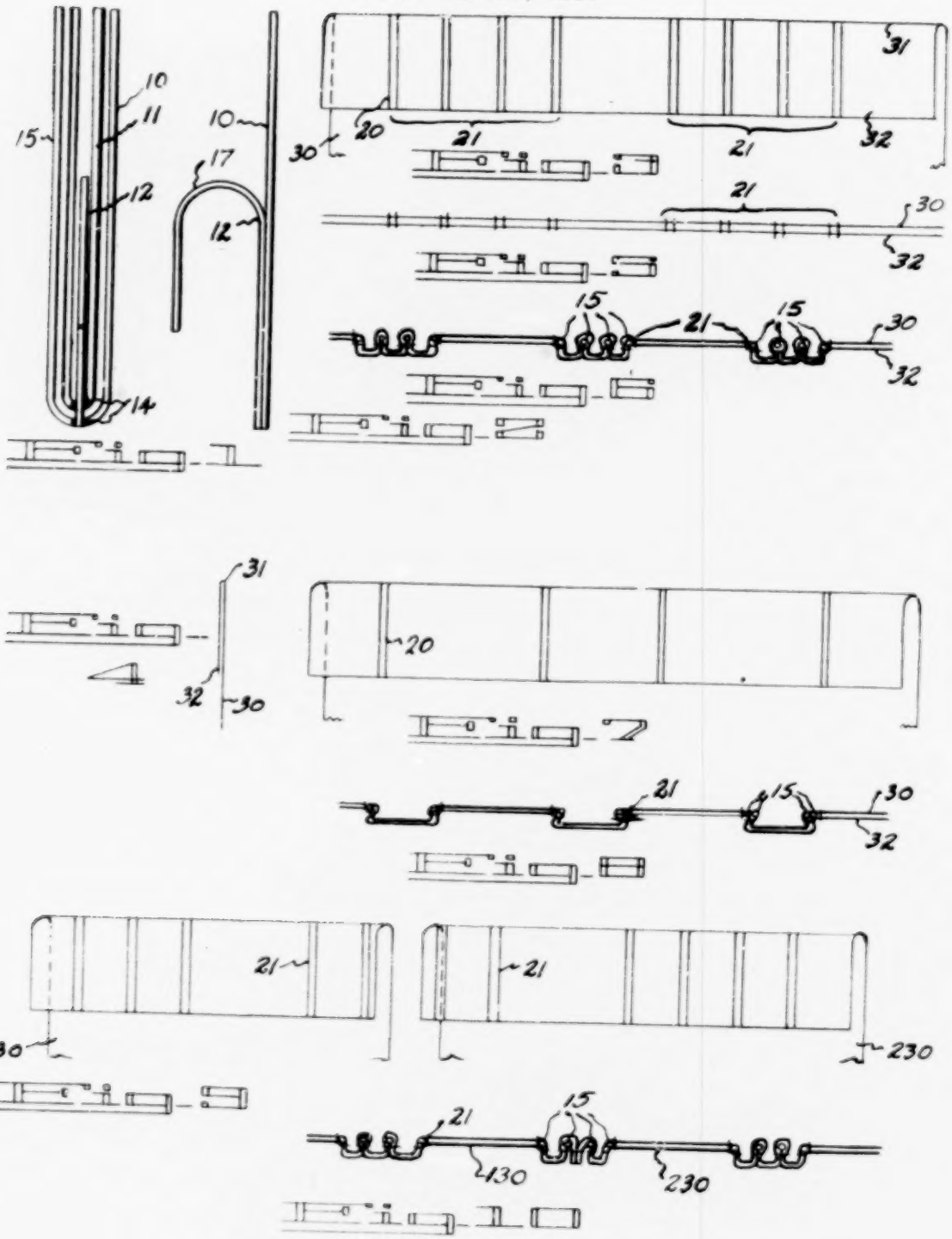
2,512,376	Perlmutter	June 20, 1950

Plaintiff's Exhibit 89

June 26, 1951 B. P. SOLOMON 2,558,467

PLEATING DEVICE

Filed Jan. 16, 1951



INVENTOR.
Bert P. Solomon
BY Daniel G. Cullen
Attorney

Patented June 26, 1951

2,558,467

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Plaintiff's Exhibit 39

UNITED STATES PATENT OFFICE

2,558,467

PLEATING DEVICE

Bert P. Solomon, Detroit, Mich.

Application January 16, 1951, Serial No. 206,216

2 Claims. (Cl. 160—348)

1

Be it known that the undersigned has invented a new and useful pleating device of which the following is a specification.

In the making of drapes, the task of forming pleats and of hanging the drapes so that satisfactory pleating and hanging of the drapes will be assured is quite difficult, often beyond the capacity of the inexperienced. In this application there is disclosed a device for pleating drapes and for hanging them, useful in the manner described herein to enable even the most inexperienced person to obtain satisfactory results.

For an understanding of the device herein disclosed and its manner of use, reference should be had to the appended drawing and to the following specification.

In this drawing:

Fig. 1 is a view of a pleating device, full size.

Fig. 2 is a side view as if from the right of Fig. 1.

Fig. 3 is a quarter-scale view of a drape formed for use with the pleating device of Fig. 1.

Fig. 4 is a diagrammatic right edge view of the drape of Fig. 3.

Fig. 5 is a full-scale diagrammatic view of the drape formed for pleating.

Fig. 6 is a double-scale diagrammatic view of the drape pleated in a triple or French pleat.

Fig. 7 shows a drape formed for box pleating.

Fig. 8 shows the drape of Fig. 7 box pleated.

Fig. 9 shows two drapes formed for being pleated and joined.

Fig. 10 shows the drapes of Fig. 9 pleated and joined.

The pleating device hereof includes three pieces of wire, referenced 10, 11, and 12, which are formed as shown in Figs. 1 and 2 and soldered together by solder at two points 14 to form a unitary pleater. The lower part of the device may be regarded as a base and the four upwardly projecting portions 15 may be regarded as the four fingers of the pleater. Each finger is of fine wire. The wire 12 is bent, as shown, to provide a hook 17 well below the upper ends of fingers 15.

The pleater is shown full scale, and is ½" wide and 3½" long, and the fingers are spaced ⅛", ¼", and ⅛", respectively.

The wires are of springy material so that the fingers, which are long, tend to retain their predetermined shape and spacing, as shown in Fig. 1, and to return thereto if sprung away.

The use of the pleater herein disclosed will now be described, with reference particularly to Figs. 3–10.

2

There is provided for use with the pleater a pattern in the form of a strip of paper, approximately 3" wide and 48" long. On this strip are marked lines corresponding in general to the lines 20 arranged in pairs 21, as shown on Fig. 3. This strip is a pattern strip and is used as follows:

A drape 30 has its upper end turned over at 31 to provide a loose hem 32 which may be tacked or basted down. The pattern strip, previously described, is then laid over the hem 32, whereupon stitch lines 20 are sewn on the hem 32 to secure it to the body of the drape 30, after which the paper pattern strip may be torn off the hem to leave the hem stitched to the drape proper on lines 20. These lines are closely spaced and arranged in pairs. Each pair defines a long, narrow pocket or tunnel 21 inside the hem, open at its lower end and closed at its upper end where the hem is folded over at 31. The several pairs are spaced on a spacing considerably greater than the spacing of the lines of a pair, and the several groups shown are spaced apart an even greater space. Thus, for a 3" hem, the spacing of a pair is ¼", the spacing between pairs is 1½" and the spacing between groups is 4", by way of example.

Thereupon, the four fingers of a pleater are worked into the four pockets or tunnels 21 formed by the pairs of stitch lines 20, with the result that at each group of four pockets there is formed a triple or French pleat, as shown in Fig. 6.

Since the several pleaters on a drape are identical, the groups of pleats of a drape will likewise be identical, assuming, of course, that the stitch lines were formed according to the pattern provided and above described. Likewise, since the several pleaters on a drape are identical, the hanger hooks 17 will be located properly and identically so that the drape will hang evenly. These hanger hooks may be used for hanging the drape on the sliders of traverse rods or directly over a drape rod, below the upper edge of the drape and thereby concealed.

Figs. 7–8 show the formation of a box pleat. The outer two tunnels 21 of each group are utilized, with the inner two tunnels 21 of each group being omitted or not utilized. The two outer fingers of the pleater will be squeezed together and used in pairs, two fingers to a loop or tunnel 21, to define the box pleat.

Figs. 9–10 show the joining and pleating of two drapes, 130 and 230, utilizing tunnels 21 formed by lines 20, with two fingers and two tunnels to a drape.

Now having described the pleater herein dis-

Plaintiff's Exhibit 39

closed and its manner of use, reference should be had to the claims which follow.

I claim:

1. For use with a drape having at its upper edge a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and hanger device insertable upwardly into said tunnels through their open lower ends, said device having a drape hanging hook and four coplanar closely and horizontally spaced upwardly projecting elongated vertical pleating fingers having blunted upper ends, all four of said fingers being of substantially the same length and extending the full lengths of said tunnels, and projecting well above the hook and being spaced two to each side of the hook, said fingers and hook being interconnected at their lower ends, with all four fingers coming together at their lower ends closer than at their upper ends for pinching the pleats together at the lower ends of the tunnels, the hanger and pleater being constructed of wire and being formed and dimensioned to have sufficient resilience at the lower ends of the fingers to enable all fingers to be moved manually and easily towards or away from one another to facilitate insertion of the fingers into said tunnels and to enable the intermediate fingers to be squeezed manually towards and closely adjacent the outermost fingers for a considerable distance along such fingers, the fingers having an inherent tendency to return to their original spacing after being manually squeezed together or spread apart.

2. For use with a drape having at its upper edge a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and hanger device insertable upwardly into said tunnels through their open lower ends, said device having a drape hanging hook and four coplanar closely and horizontally spaced upwardly

projecting elongated vertical pleating fingers having blunted upper ends, all four of said fingers being of substantially the same length and extending the full lengths of said tunnels, and projecting well above the hook and being spaced two to each side of the hook, said fingers and hook being interconnected at their lower ends, with all four fingers coming together at their lower ends closer than at their upper ends for pinching the pleats together at the lower ends of the tunnels, the hanger and pleater being constructed of wire and being formed and dimensioned to have sufficient resilience at the lower ends of the fingers to enable all fingers to be moved manually and easily towards or away from one another to facilitate insertion of the fingers into said tunnels and to enable the intermediate fingers to be squeezed manually towards and closely adjacent the outermost fingers for a considerable distance along such fingers, the fingers having an inherent tendency to return to their original spacing after being manually squeezed together or spread apart, the outer pair of fingers being the legs of a U-shaped piece of wire, the inner pair of fingers also being the legs of a second U-shaped piece of wire nested coplanar with and inside the first piece of wire, and the hook being an inverted third U-shaped piece of wire whose plane is normal to the plane of the first two pieces of wire, all three pieces being joined at the nested bights of the first two and at the end of one leg of the third piece.

BERT P. SOLOMON.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
834,188	Carr	Oct. 23, 1906
2,012,734	Steiner	Aug. 27, 1935

Defendant's Exhibit 2

Defts. Exhibit No. 3

Office - Supreme Court, U.S.
FILED
APR 26 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

No. 953 October Term 1957

CONSOLIDATED TRIMMING CORPORATION,
Petitioner

vs.

FLORENCE F. LOUDON,
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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Rule 54(d) of the Federal Rules of Civil Procedure 5, 7, 11

Rule 20(c) of the United States Court of Appeals for the District of Columbia Circuit 7, 11

IN THE

SUPREME COURT OF THE UNITED STATES

No. 953 October Term 1957

CONSOLIDATED TRIMMING CORPORATION,
Petitioner

vs.

FLORENCE F. LOUDON,
Respondent

Petition for Writ of Certiorari

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Consolidated Trimming Corporation, prays for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit, to review

that Court's decision (in the form of an order) dated and entered on December 12, 1957 (Appendix hereto, p. 30), and

so much of that Court's judgment dated and entered on December 12, 1957 (Appendix hereto, p. 34),

which vacated the award of taxable costs to Petitioner in its original judgment of November 8, 1956 (Appendix hereto, p. 31) and held that Petitioner shall not recover its costs "expended in connection with the litigation";

upon Respondent's Motion for Reformation of Judgment (Appendix hereto, on page 32) based on the ground that where initial jurisdiction over a non-

resident[1] alien patentee is obtained by service by registered mail under a court order[2] pursuant to 35 U.S.C. 293,[3] the court does not have jurisdiction *in personam* over the patentee (here, Respondent) but only over the patent *res*, and that the *due process* clause of the Fifth Amendment[4] bars the imposition of a personal judgment on such patentee even for the taxable costs (or attorney's fees under 35 U.S.C. 285[5]) incident to the cause of action tried and determined *on the merits of the controversy*, as the issues thereof were framed by the complaint and such *patentee's answer*.

The Record on the Petition

Petitioner has filed a certified copy of the two-volume printed Joint Appendix and of all the proceedings in the Court of Appeals;—Volume 1 (pages 1a to 188a) containing the pleadings, transcript of the trial and the District Court's decision, findings & conclusions and judgment (and certain exhibits), and Volume 2 (pages 189a to 277a) containing a copy of Respondent's patent *sub judice* (pp. 189a-193a) and copies of the prior-art patents (pp. 195a-272a).

Petitioner has also filed nine additional copies of Vol-

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[1] the term "non-resident" as used here and elsewhere in this Petition, is intended to mean one not residing in the United States, its territories or possessions.

[2] ORDER (dated and entered December 23, 1954):
"It is hereby ordered that a copy of the Summons and of the Complaint in this action shall be served upon defendant, by mailing the same to defendant by registered mail, return receipt requested, to the address given for her in the Complaint."

[3] Set out on page 10, infra.

[4] Set out on page 9, infra.

[5] 35 U. S. C. 285 (July 19, 1952, c. 950 §1, 66 Stat. 813):
"The court in exceptional cases may award reasonable attorney fees to the prevailing party."

umes 1 & 2 of said Joint Appendix, and has further appended to this Petition, as an Appendix (pages 25 to 34), printed copies of the proceedings in the Court of Appeals, including that Court's Opinion and original Judgment, Respondent's Motion for Reformation of Judgment, and that Court's subsequent modifying Order and Judgment.

Opinions, decisions and judgments rendered in the Courts below

The District Court's decision and findings & conclusions are not reported in the official reports but are reported on pages 87 & 88 of Volume 106 of the United States Patents Quarterly (106 PQ 87), and are reproduced on pages 136a to 139a of Volume I of the Joint Appendix, along with the District Court's judgment (dismissing Petitioner's complaint);—the District Court's Memorandum decision (dated June 23, 1955) appearing on page 136a of the Joint Appendix, its findings & conclusions (dated June 30, 1955) on page 137a-139a of the Joint Appendix, and its judgment (dated June 30, 1957) on page 139a of the Joint Appendix.

The reversing Opinion (dated November 8, 1956) of the United States Court of Appeals for the District of Columbia Circuit (holding Respondent's patent invalid) is reported at 239 F.2d 33 (111 PQ 232) 99 App. DC 213, and is reproduced on pages 25 to 30 of the Appendix hereto, and that Court's original judgment dated November 8, 1956 (awarding Petitioner its taxable costs) is reproduced at page 31 of the Appendix hereto.

The decision (in the form of an Order) and the judgment of the United States Court of Appeals for the District of Columbia Circuit (both dated December 12, 1957), in respect to which the writ of certiorari is sought, are not reported, but are reproduced on pages 33 and 34 of the Appendix hereto.

Grounds on which the jurisdiction of this Court is invoked

The decision and judgment sought to be reviewed (Appendix hereto, pp. 33 & 34) are dated and were entered on December 12, 1957.

By this Court's Order made and entered on March 8, 1958, Petitioner's time for filing its petition for writ of certiorari in respect to the aforementioned decision and judgment was extended to and including April 26, 1958.

The statutory provision believed to confer on this Court jurisdiction to review, by writ of certiorari, the aforementioned decision and judgment of December 12, 1957, is the Act of June 25, 1948, c. 646, 62 Stat. 928;—28 U.S.C. 1254(1):

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after judgment or decree."

The discretionary power of this Court is invoked on the following grounds:

1) The Court of Appeals for the District of Columbia Circuit has erroneously decided an important question of federal law arising under Section 293 of the Patent Act of 1952,* which question has not been, but should be, settled by this Court, namely,

a) whether an action for declaratory judgment to determine the validity and infringement of a non-resident alien patentee's United States patent, in which jurisdiction is invoked under 35 U.S.C. 293, is *in personam*, or *in rem* (or *quasi-in-rem*), and

* which Section (35 U. S. C. 293) has no counterpart in any prior Patent Act or in any other federal statute relating to patents or relating to suits involving patents or rights thereunder.

b) *if* it is *in rem* (or *quasi-in-rem*), whether under the due process clause of the Fifth Amendment the successful plaintiff is entitled to a personal judgment against such non-resident patentee who filed an answer and tried the case on the merits, for the costs prescribed by 28 U.S.C. 1920, incident to the trial of the action on the merits and taxable as of course under Rule 54(d) of the Federal Rules of Civil Procedure.

2) The Court of Appeals for the District of Columbia Circuit has erroneously decided an important question of federal law in conflict with the decision of the United States Court of Appeals for the Second Circuit in the case of *United States vs Balanovski*, 236 F.2d 298, at 302, on the controlling legal principle that the court acquires power to render a judgment in *personam* in an action *in rem* [x] where (as in the case at bar) the defendant appears, answers and defends on the merits; provided only that the original *in rem* jurisdiction is valid [*].

3) The Court of Appeals for the District of Columbia Circuit has erroneously decided the important question of Federal law in conflict with the decision of the United States Court of Appeals for the 7th Circuit in the case of *In re Northern Indiana Oil Co. (Moore vs Fletcher)*, 192 F.2d 139, at 142, on the controlling legal principle that under Rule 54(d) of the Federal Rules of Civil Procedure the prevailing party is *prima facie* entitled to costs as of course, and that it is incumbent upon the unsuccessful party to show special circumstances sufficient to overcome the pre-

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x assuming (arguendo) the correctness of Respondent's premise below, adopted by the courts below, that an action under 35 U. S. C. 293 is one *in rem*.

* and Respondent at bar has never questioned but has indeed at all times conceded the validity of the District Court's jurisdiction under 35 U. S. C. 293 to determine the questions of the validity and alleged infringement of Respondent's patent as placed in issue by Petitioner's complaint and Respondent's answer.

vailing party's *prima facie* right to recover costs as of course*.

4) The Court of Appeals for the District of Columbia Circuit has erroneously decided an important question of federal law in a way in conflict with following applicable decisions of this Court holding that defendant's appearance in an action *in rem* empowers the court to render a judgment *in personam*, including an *in personam* judgment for costs:

Houston vs Ormes, 252 U.S. 469 (64 L Ed 667, 670)
Cooper vs Reynolds, 77 U.S. 308 (19 L Ed 931, 932)

and in conflict with the following decision of this Court holding that costs are an incident of the cause of action tried and determined (and do not constitute a cause of action, in and of itself, separate or distinct from the cause of action tried and determined):

R. F. C. vs Menihan, 312 U.S. 81 (85 L. Ed. 595)

and in conflict with the following decisions of this Court that the prevailing party is entitled to recover taxable costs as of right:

R. F. C. vs Menihan, supra
In re Peterson, 253 U.S. 300, 317-8 (64 L. Ed. 919)

The Questions Presented for Review

Question No. 1:

Whether an action for declaratory judgment under 35 U.S.C. 293, as to the validity and infringement of a United States patent, wherein the defendant-patentee is served by registered mail pursuant to court order as authorized by 35 U.S.C. 293, is an action *in personam* or an action *in rem* or *quasi-in-rem*.

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* Respondent has not made *any* showing of *any* special circumstances.

Question No. 2:

Whether such action is converted to one *in personam* when defendant files an answer and tries the case on the merits (even assuming, *arguendo*, that the action was one *in rem* or *quasi-in-rem* in its inception because of language of the statute or the nature of the service).

Question No. 3:

a) Whether under the *due process clause*[4] *of the Fifth Amendment* (and the applicable Rule and Statute[6]) plaintiff (here, Petitioner) is entitled to a personal judgment for costs taxable as of course[6] against a non-resident alien patentee (here, Respondent), in an action against such patentee for declaratory judgment under 28 U.S.C. 2201[7] and *35 U.S.C. 293*[3] to have such patentee's U.S. patent declared invalid and/or not infringed by plaintiff (here, Petitioner), an American manufacturer whose products such patentee's foreign counsel (in letters addressed to such plaintiff's trade and customers in the United States) charged to constitute infringements of such patent which had been obtained under the Patent Act of 1952[8], *which Act includes 35 U.S.C. 293*,

where service on such patentee is made by registered mail under a court order[2] pursuant to the provisions of 35 U S.C. 293, and

where such patentee files an answer going to the

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[2] set out in footnote 2 on page 2, supra

[3] set out on page 10, infra

[4] set out on page 9, infra

[6] under Rule 54-d (F. R. C. P.), Rule 20(c) of the Court of Appeals and 28 U. S. C. 1920, which are set out on page 11, infra

[7] set out on page 10, infra.

[8] Public Law 593, 82nd Congress, 2nd Session, Chapter 950, 66 Stat. 792, approved July 19, 1952 (Title 35 of the United States Code);—the applicable provisions of which are set out on pages 9 & 10, infra

merits of the controversy and goes to trial (and cross-examines & introduces evidence) on the merits of the issues so raised by the pleadings, and

where such patentee requests and obtains a judgment against plaintiff for taxable costs, upon the District Court's decision on the merits favorable to such patentee (which decision is subsequently reversed by the Court of Appeals), or

b) *whether* such personal judgment against a non-resident alien patentee is barred by the *due process* clause of the Fifth Amendment to the Constitution of the United States because of the nature or character of the District Court's jurisdiction under 35 U.S.C. 293, or

c) *whether* the denial of its taxable costs to the successful plaintiff (or the relieving of the foreign defendant of liability for costs when he loses the case) is not such a discrimination as violates the due process clause of the 5th Amendment to the Constitution of the United States.

Question No. 4:

Whether a non-resident alien patentee (here, Respondent) who seeks and obtains a patent under the Patent Act of 1952, has legal immunity, under the *due process* clause of the Fifth Amendment, from costs taxable as of course (and/or from attorney's fees under 35 U.S.C. 285) in an action for a declaratory judgment of patent-invalidity and/or non-infringement (under 28 U.S.C. 2201[7] and 35 U.S.C. 293[3]) to resolve the charges of infringement which such patentee's foreign counsel leveled at the retailer-outlets in the United States of plaintiff, an American manufacturer (here, Petitioner), in which action service is made on such non-resident alien by registered mail under

[3] set out on page 10, infra

[7] set out on page 10, infra

a court order [2] pursuant to the provisions of 35 U.S.C. 293 and wherein such non-resident alien patentee files an answer going to the merits of the controversy and goes to trial on the merits of the issues raised by the pleadings and seeks and obtains a judgment against plaintiff for taxable costs upon the District Court's decision favorable to such patentee (which decision is subsequently reversed by the Court of Appeals).

Constitutional Provision, Statutes & Rules which the case involves

Constitutional Provision

The *due process* clause of the Fifth Amendment to the Constitution of the United States:

> "No person shall . . . be deprived of . . . property, without due process of law"

The applicable provisions of the Patent Act of 1952

Public Law 592, 82nd Congress, 2nd Session, Chapter 950, 66 Stat. 792, approved July 19, 1952 (Title 35 of the United States Code)

Applicability of Patent Act of 1952 to Respondent's patent sub judice:

Section 4-a of Patent Act July 19, 1952, c. 950, 66 Stat. 815:

> "(a) This Act (this title) shall take effect on January 1, 1953 and shall apply to all applications for patent filed on or after such date and to all patents granted on such applications. It shall apply to further proceedings on applications pending on such date and to patents granted on such applications except as otherwise provided. It shall apply to unexpired patents granted prior to such date except as otherwise provided."

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[2] set out in footnote 2 on page 2, supra

District Court's Jurisdiction under the Patent Act of 1952 in respect to Respondent's patent sub judice and in respect to Respondent's rights thereunder

35 U.S.C. 293 (July 19, 1952, c. 950 §1, 66 Stat. 814):

> "Every patentee not residing in the United States may file in the Patent Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court."

The Federal Declaratory Judgment Act

28 U.S.C. 2201 (June 25, 1948, c. 646, 62 Stat. 964, Amended May 24, 1949, c. 139 §111, 63 Stat. 105):

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

District Courts' exclusive jurisdiction in civil actions arising under the Patent Laws

28 U.S.C. 1338-a (June 25, 1948, ch. 646, sec. 1, 62 Stat. 931):

> "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress

relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases."

Statute and Rules relating to Costs:

28 U.S.C. 1920 (June 25, 1948, c. 646, 62 Stat. 955):

"Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

Rule 54(d) of the Federal Rules of Civil Procedure:

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs. . . ."

Rule 20(c) of the United States Court of Appeals for the District of Columbia Circuit:

"In cases of reversal of any judgment or order by this court, costs shall be allowed to the appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case."

Statement of the Case

Nature of the action and how the controversy arose

This was an action under Section 293 of the Patent Act of 1952 (35 U.S.C. 293) against a non-resident alien patentee (here, Respondent) for a declaratory judgment to have such patentee's U. S. patent 2,672,194 *on drapery pleating hook and tape* (Joint Appendix, p. 189) declared invalid and/or not infringed by plaintiff (here, Petitioner), an American manufacturer whose pleating-hook [1] and pleating-tape [2] such patentee's foreign counsel charged were infringements of such patent, in letters addressed to plaintiff's (Petitioner's) trade and customers throughout the United States.

Plaintiff, hereinafter referred to as Petitioner, was one of five similarly-accused American manufacturers, to whose trade and customers (throughout the United States) Respondent's Canadian counsel wrote identical letters (exemplified by Plaintiff's Exhibit 7; Volume 1 of Joint Appendix, pp. 7a-8a);—advising the trade that Respondent had granted an exclusive license [3] under her patent to the Kirsch Company (of Sturgis, Michigan), the largest American manufacturer of drapery hardware, and threatening the trade with infringement suits if they did not give Respondent their *undertaking* that they would discontinue further sale of the so accused pleating hooks and

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[1] shown in the drawings in Exhibit 3-a on pages 5a & 6a of Joint Appendix (Volume 1)

[2] specimen of which is plaintiff's Exhibit 1 affixed to page 4a of Joint Appendix (Volume 1) and which is also shown in the drawings on pages 5a & 6a of Joint Appendix (Volume 1)

[3] "The Kirsch Company has obtained a license from Mrs. Loudon under her patent, and that company manufactures and sells the 'Easy Pleat' drapery hooks and header strips *throughout the United States*. No other manufacturer or distributor in the United States has been granted a license by Mrs. Loudon." (Joint Appendix, pp. 7a & 8a)

tape of Petitioner (and of the other four American manufacturers).[4]

The subject matter of the controversy

The business of manufacturing and selling pleating-hooks and pleating-tape became a very large and important one after the Second World War [5] because of the widespread and ever expanding use of pleated draperies in new homes brought on by the building boom in low-priced and medium-priced homes since the Second World War and by the extensive use of picture-windows and other large window-areas in homes and also by the increase of window-areas in relation to wall-areas in new office buildings.

Responding to this mass-market for draperies, Petitioner and the four other American manufacturers placed on the market a prior-art 4-finger pleater hook [6] and a prior-art pleater-tape [6] to be sewn to the top of the drapery and having vertical pockets into which the fingers of the hook are inserted, so as to form pleats in the top or "head"; —the pleater-hook also having a suspension-hook portion by which it is hung onto the curtain-rod or traverse-rod.

One form of Petitioner's 4-finger pleater-hook (as well as Petitioner's pleater-tape) is shown in the drawings

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[4] ". . .let us have your undertaking that you will discontinue further sale of devices which constitute infringements of her patent. In the absence of such an undertaking by you, Mrs. Loudon will be compelled to take appropriate action to protect the exclusive rights granted to her under her patent." (Joint Appendix, p. 8a)

[5] Petitioner alone having sold many millions of pleating-hooks in a brief period of a few years prior to the commencement of this action (Joint Appendix, pp. 39a-40a) and a corresponding yardage of pleating-tape;—there being approximately 10 pleating-hooks used with every 2 & 2/3 yards of pleating-tape.

[6] the expired prior-art patents showing pleater-hooks and showing pleater-tape are cited in the Opinion of the Court of Appeals (pages 28 & 29 of the Supplemental Appendix) and copies of these prior-art patents are contained in Volume 2 of the Joint Appendix

on pages 5a & 6a of the Joint Appendix. Petitioner's other pleater-hook involved in this action was just like the pleater-hook shown in these drawings, but without the pivotally-mounted and swingable 2-armed elbow-shaped pleat-pincher (designated generally by the numeral 29) which is shown in its operative position in Figures 2 to 6 and 11 & 13 and in its inoperative position in Figures 7 to 10 and 12 (Joint Appendix, pp. 5a & 6a). *This pleat-pincher is not in any way involved in Respondent's charge of patent infringement.*

It was to protect this important mass-market in such pleating-hooks and pleating-tape, for draperies, that Petitioner filed its Complaint on December 23, 1954 (Joint Appendix pp. 1a-4a) 12 days after Respondent launched her campaign against the trade for the benefit of her exclusive licensee and manifestly also to increase her royalty-receipts from such licensee (Joint Appendix, p. 7a).

Pleadings, proceedings & rulings in District Court

In addition to seeking a declaratory judgment as to the validity and infringement of Respondent's patent, the original Complaint also sought an injunction and damages.

The Complaint and Summons were served on Respondent by registered mail under the court Order (pursuant to the provisions of 35 U.S.C. 293) set out in footnote 2 on page 2, supra.

Respondent entered her appearance, through her attorneys, and moved to dismiss so much of the Complaint as sought an injunction and damages, and filed her Answer to so much of the Complaint which sought a declaratory judgment as to the validity and infringement of her patent.

Thereafter the District Court sustained the Respondent's aforementioned Motion, on the ground that an action under 35 U.S.C. 293 is one *in rem* and that the Court does not have personal jurisdiction over the defendant (see page 32 of Appendix hereto).

Respondent having, however, formally stated to the Court her decision voluntarily to discontinue all further infringement-charging letters to Petitioner's trade (Joint Appendix, p. 13a), thus making an injunction unnecessary, and the Court having granted Petitioner's request for an advancement of the case to an early trial and the case having accordingly been set down for trial on a date which was only three months after the filing of the Complaint, Petitioner did not appeal from the District Court's aforementioned dismissal of the causes of action for injunction and damages;—particularly as such appeal would inevitably have delayed the trial of the case as to the validity and infringement of Respondent's patent.

Upon the Complaint for declaratory judgment (Joint Appendix, pp. 1a-4a), as amended (Joint Appendix, pp. 13a-14a), and Respondent aforesaid Answer (Joint Appendix, pp. 14a-15a), the case was tried (Joint Appendix, pp. 18a-135a), and Respondent participated in such trial in all respects, including the cross-examination of Petitioner's witnesses (Joint Appendix, pp. 28a-41a, 45a, 52a-53a, 55a-59a, 73a-81a & 94a-95a) and the introduction in evidence of testimony of the witnesses called on behalf of Respondent and the introduction of exhibits on behalf of Respondent (Joint Appendix, pp. 97a-136a).

Upon the conclusion of the trial and after receiving briefs from Petitioner and Respondent, the District Court (Judge Letts) handed down its decision (on June 23, 1954) designated "Informal Memorandum" (Joint Appendix, p. 136a), dismissing Petitioner's complaint and directing Respondent's counsel to submit, for settlement, findings of fact, conclusions of law, and a judgment form dismissing the complaint.

Thereupon Respondent noticed for hearing (Joint Appendix, p. 137a) proposed findings & conclusions and form of judgment.

Upon the so noticed hearing (on June 30, 1954), attended by counsel for both parties, the District Court adopted, signed and entered the findings of fact and conclusions of law (Joint Appendix, pp. 137a-139a) and the judgment (Joint Appendix, p. 139a) submitted by respondent;—striking only the words "with prejudice" from the judgment.

In the judgment so submitted, Respondent included (and the Court adopted) the following provision:

> "The costs of this action shall be taxed against the Plaintiff" (here, Petitioner)

Thereafter Respondent's counsel presented a Bill of Costs to the Clerk of the District Court, and the Clerk taxed Respondent's costs against Petitioner;—though in a total amount less than the total requested by Respondent's Bill of Costs (by the disallo vance of certain items of costs included therein).

Thereupon Respondent filed a Motion for re-taxation of her costs, seeking the taxation of some of the items of costs which the Clerk had disallowed.

Upon Petitioner's appeal (Joint Appendix, p. 139a) to the Court of Appeals, the matter of re-taxation of costs in the District Court was stayed, pending the outcome of Petitioner's appeal.

Court of Appeals' decision, on the merits, reversing District Court's judgment, and the Court of Appeals' judgment ordering that Petitioner recover from Respondent its taxable costs on its appeal and have execution therefor

On November 8, 1956, the Court of Appeals held Respondent's patent invalid and accordingly reversed the judgment of the District Court (Appendix hereto, pp. 25 to 30).

Addressing itself, however, first to the question of validity of the patent (Appendix hereto, on page 26), in accordance with the practice suggested by this Court in

Sinclair Co. vs Interchemical Corp.[1] because of the greater public importance of the question of the validity of the patent in suit, the Court of Appeals found it unnecessary to decide the issue of infringement,[2] because its decision that the patent is invalid rendered the issue of infringement moot.

Upon its reversal of the District Court's judgment, the Court of Appeals remanded the case in the District Court "with directions to enter a Judgment declaring that (Respondent's) patent is invalid and granting such further relief to (Petitioner) as may appear to the Court to be just and proper" (Appendix hereto, p. 30), and simultaneously entered its Judgment (Appendix hereto, p. 31) to like effect and

> "further ORDER by the Court that appellant herein (Petitioner) recover from appellee (Respondent) its taxable costs on its appeal and have execution therefor."

Thereafter (on January 5, 1957) the Clerk of the Court of Appeals taxed Petitioner's costs in the Court of Appeals against Respondent, in the amount of $1,433.30 (Appendix hereto, p. 31).

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[1] "There has been a tendency among the lower Federal courts in infringement suits to dispose of them where possible on the ground of non-infringement without going into the question of validity of the patent. *Irvin vs Buick Motor Co.* (CCA 8th) 88 F. 2d 947, 951; *Aero Spark Plug Co. vs B. G. Corp.* (CCA 2d) 130 F. 2d 290; *Franklin vs Masonite Corp.* (CCA 2d) 132 F. 2d 800. It has come to be recognized, however, that of the two questions, validity has the greater public importance, *Cover vs Schwartz* (CCA 2d) 133 F. 2d 541, and the District Court in this case followed what will usually be the better practice by inquiring fully into the validity of this patent." *Sinclair & Carroll Co. vs Interchemical Corp.*, 325 U. S. 327, 330 (65 S Ct 1143) 89 L Ed 1644, 1646

[2] "We do not reach the issue of infringement *vel non*" (Appendix hereto, p. 30)

Thereafter, Petitioner moved in the District Court to have that Court's Judgment (of June 30, 1955) vacated and for the entry of a new Judgment holding Respondent's patent invalid and for Petitioner's costs taxed in the Court of Appeals and its costs in the District Court (for which it filed then its Bill of Costs) and for attorney's fees under 35 U.S.C. 285.

Respondent's Motion for Reformation of Judgment in the Court of Appeals

Relying on *Pennoyer vs. Neff*, 95 U.S. 174 (1877) 24 L. Ed. 565 and on the *due process* clause of the Fifth Amendment to the Constitution of the United States, Respondent filed (on August 15, 1957) a Motion for Reformation of Judgment (Appendix hereto, on page 32) in the Court of Appeals, requesting that the above-quoted portion of that Court's Judgment relating to costs be stricken, on the ground that the Court did not have jurisdiction *in personam* over Respondent because she is a citizen and resident of Canada and was served only by registered mail under the court order* pursuant to 35 U.S.C. 293;—on the erroneous theory (adopted by the Court) that an action for declaratory judgment under 35 U.S.C. 293 is one *in rem* and is not converted to one *in personam* by defendant's appearance, answer and participation in the trial on the merits, and that, under the *due process* clause of the 5th Amendment and *Pennoyer vs. Neff*, supra, a personal judgment for taxable costs (or for attorney's fees under 35 U.S.C. 285) *incident to the cause of action so tried and determined* cannot be entered against the defendant (Respondent) notwithstanding Respondent's appearance, answer and participation in the trial on the merits and notwithstanding that in the (subsequently reversed) Judgment of the District Court Respondent pressed for and obtained a Judgment for her costs to be taxed against Petitioner.

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* set out in footnote 2 on page 2, supra

Court of Appeals' decision sustaining Respondent's Motion and ordering that Petitioner should not recover its costs or expenses either in the trial court or in the appellate court

On December 12, 1957 the Court of Appeals sustained (Appendix hereto, pages 33 and 34) Respondent's aforesaid Motion for Reformation of Judgment, and not only struck from its original Judgment the order that Petitioner shall recover from Respondent its taxable costs on the appeal and have execution therefor, but also ordered that Petitioner shall likewise not recover any of its costs and expenses in the District Court:

> "It is further ordered by the Court that each party to this appeal shall bear such costs as it has expended in connection with the litigation" (Appendix hereto, p. 34);—

thereby also barring attorney's fees to which Petitioner would otherwise have been entitled to under 35 U.S.C. 285,

> in view of the manifest lack of good faith in Respondent's aforementioned letter-writing campaign aimed to divert the pleater hook and tape business from Petitioner (and from the other four similarly-situated American manufacturers) to Respondent's aforementioned exclusive licensee, as evidenced, inter alia, by Respondent's failure to institute any suit for patent infringement *and her failure to counterclaim for infringement in the case at bar*, and
>
> in view of the prompt institution and diligent and expeditious prosecution of this action by Petitioner, at great expense to it, and inevitably also in vindication of the rights of the four other similarly situated American manufacturers and to the benefit of the public.*

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* *Swan Carburetor Co. vs Chrysler Corp.*, 55 F. Supp. 794 (D. C. Mich. 1944) 61 PQ 475, 478-9;—citing *U. S. Gypsum vs Consolidated*, 130 F. 2d 888 (6 Cir.) 55 PQ 247, 248-9

Basis of federal jurisdiction of the court of first instance

1) An actual controversy having existed between the parties as to the validity and infringement of a United States patent, such controversy was within the District Court's subject-matter jurisdiction under 28 U.S.C. 1338-a (set out on p. 10, supra), which gives district courts exclusive jurisdiction of any civil action arising under any Act of Congress relating to patents.

2) The federal declaratory judgment act, 28 U.S.C. 2201 (set out on p. 10, supra) authorized the district court to resolve an actual controversy within its jurisdiction, by declaratory judgment.

3) Section 293 of the Patent Act of 1952; 35 U.S.C. 293 (set out on p. 10, supra) prescribed the district courts' venue jurisdiction in "proceedings affecting the patent or rights thereunder" where the patentee does not reside in the United States, and gave the U.S. District Court for the District of Columbia venue jurisdiction in the case at bar because such patentee (Respondent) had not filed in the Patent Office "a written designation of a person within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder", as provided by 35 U.S.C. 293.

Argument

A large and ever increasing proportion of all charges of patent-infringement are determined by suits for declaratory judgment initiated by the manufacturer whose product has been charged with patent-infringement by letters addressed to his trade by the patent-owner or his exclusive licensee, who prefers thus to divert the trade,* rather than

* *Kleinman vs Kobler*, 230 F. 2d 913, at 914 (2 Cir.): "To take a license, calling for small royalty payments, frequently involves less expense than prolonged litigation; besides, if the licenses are few, the *licensees may deem it desirable to* share a monopoly which will endure while *the patent-owner frightens off other users.*"

to file suit either against the manufacturer or against his customer.

A very substantial proportion of all United States patents are issued to or owned by persons not residing within the United States, who cannot be sued for declaratory judgment to resolve the questions of infringement and validity raised by such infringement-letter campaign directed at the American manufacturer's trade and customers in the United States, except for the jurisdiction afforded by the Patent Act of 1952 (35 U.S.C. 293).

As such "designation of a person within the United States" is seldom *if ever* filed by foreign patentees, the District Court of the District of Columbia is virtually the only District Court in which an American manufacturer can have relief against a foreign patentee's infringement-charging letter-campaign designed to divert the trade to such patentee's licensee.

If in such suit the foreign patentee is held to be entitled to recover his costs incident to such suit *if he prevails*,[1] while the plaintiff (the American manufacturer) is held not entitled to recover his costs *if he prevails*,[2] then there is a very substantial discrimination worked against the American manufacturer whose products have been so charged with infringement, and in favor of the foreign patentee.

It is respectfully submitted that such discrimination violates the due process clause of the Fifth Amendment to the Constitution of the United States and is in conflict with the decisions cited under *Grounds* 2, 3 & 4 on which this Court's jurisdiction is invoked (pp. 5 & 6, supra).

Patent litigation is very expensive and burdensome.

While in the case at bar Petitioner undertook such litigation, wholly at its own expense, in order to protect

[1] as was held by the District Court, in the case at bar (see District Court's Judgment on page 139a of Joint Appendix)

[2] as was held by the Court of Appeals, in the case at bar (see that Court's Order and Judgment of December 12, 1957 on pages 33 & 34 of the Appendix hereto)

its valuable trade against Respondent's unwarranted campaign directed thereto, the litigation has inevitably been also of equal benefit to the four other American manufacturers whose like products Respondent has similarly charged with infringement in the trade, and has also been to the benefit of the public.

The aforementioned discrimination will necessarily serve as a substantial deterrent to invoking the district courts' jurisdiction under 35 U.S.C. 293 (the only statute available to the American manufacturer forced to seeking a determination of the validity and alleged infringement of a patent of a foreign patentee), and such discrimination constitutes a substantial abridgement of the rights intended to be accorded by 35 U.S.C. 293.

In the case at bar, Respondent has made no showing of any special circumstance which should relieve Respondent of the same liability for costs where Petitioner was successful on the appeal as Respondent successfully urged upon the District Court should be Petitioner's liability for costs in Respondent's favor when Respondent was successful in the District Court.

Under this Court's definition [1] in *Freeman vs Alder-*

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[1] **Freeman vs. Alderson:**

"Actions *in rem*, strictly considered, are proceedings against property alone, treated as responsible for the claims asserted by the libellants or plaintiffs. The property itself is in such actions the defendant, and—except in cases arising during war, for its hostile character—its forfeiture or sale is sought for the wrong, in the commission of which it has been the instrument, or for debts or obligations for which by operation of law it is liable. The court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case.

"There is, however, a large class of cases which are not strictly actions *in rem*, but are frequently spoken of as actions *quasi in rem*, because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of nonresi-

son, 119 U. S. 185 (30 L. Ed. 372, at 373) as to what an action *in rem* is and as to what an action *quasi in rem* is, the action at bar is clearly not an action *in rem* nor an action *quasi in rem*.

However, even assuming (arguendo) that the action at bar is one *in rem* or one *quasi in rem*, nevertheless, under this Court's decision in *Cooper vs Reynolds*,[2] 77 U. S. 308 (19 L. Ed. 931, 932) and in *Houston vs Ormes*,[3] 255 U. S. 469 (64 L. Ed. 667, at 670) the action at bar became converted to one *in personam* when Respondent filed her answer and proceeded to trial on the merits;—at least to the extent of permitting a judgment against Respondent for taxable costs *incident to the cause of action tried and determined on the merits*.

Under this Court's decision in *R. F. C. vs Menihan*, 312 U. S. 81 (85 L. Ed. 595) costs are an incident of the cause of action tried and determined, and under this Court's

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dents is attached and held for the discharge of debts due by them to citizens of the State, and actions for the enforcement of mortgages and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant, to satisfy the demands of the plaintiff, are in a general way thus designated. But they differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required, and that judgment therein is only conclusive between the parties."

[2] **Cooper vs. Reynolds:**

"If the defendant appears, the cause becomes mainly a suit *in personam*, with the added incident that the property attached remains liable, under the control of the court, to answer to any demand which may be established against the defendant by the final judgment of the court."

[3] **Houston vs. Ormes:**

"But in the present case the question of situs is not material. If the jurisdiction as to the defendant Sanders had depended upon publication of process against her as a nonresident under §105 of the District Code (Act of March 3, 1901, chap. 854, 31 Stat. at L. 1189, 1206), upon the theory that her claim against the govern-

decision *in the matter of Peterson*,[4] 253 U. S. 300, at 317-8 (64 L. Ed. 919, at 927) and *R. F. C. vs Menihan*, supra, the prevailing party is entitled to costs as of right.

Conclusion

In conclusion Petitioner respectfully submits that a writ of certiorari be issued to the United States Court of Appeals for the District of Columbia Circuit to review that Court's Order and Judgment of December 12, 1957.

Respectfully submitted,

LEONARD L. KALISH
Attorney for Petitioner

WILLIAM E. FRIEDMAN
Counsel for Petitioner

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ment was 'property within the District,' the point would require consideration. But the jurisdiction over her rests upon her having voluntarily appeared and answered the bill without objection. Hence there is no question that the decree binds her, and so constitutes a good acquittance to the United States as against her."

[4] In re Peterson:

"The further question is whether the district court had power to make the expense of the auditor taxable in whole or in part against the prevailing party, if the trial judge should so determine. The advantages of such a flexible rule are obvious. But general principles governing the taxation of costs in actions at law, followed by the Federal courts since their organization, preclude its adoption. "While in equity proceedings the allowance and imposition of costs is, unless controlled by statute or rule of court, a matter of discretion, it has been uniformly held that *in actions at law the prevailing party is entitled to costs as of right* (compare *United States v. Schurz*, 102 U. S. 378, 407, 26 L. Ed. 167, 175), except in those few cases where, by express statutory provision or by established principles, costs are denied. It has also been generally held that this *right to costs of the prevailing party in actions at law extends to the entire costs in the trial court*, and that the court is without power to make an apportionment based upon the fact that the prevailing party has failed in a part of his claims, or that, for other reasons, only a part or none of the costs should in fairness be allowed. This rule of practice, established by long usage, is confirmed by the language of §983 of the Revised Statutes."

Appendix

Opinion

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12853

CONSOLIDATED TRIMMING CORPORATION, *Appellant*,

v.

FLORENCE F. LOUDON, *Appellee*

Appeal from the United States District Court
for the District of Columbia

Decided November 8, 1956
(reported at 239 F. 2d 33 [111 PQ 232] 99 App. DC 213)

Before PRETTYMAN, FAHY and WASHINGTON, Circuit Judges.

WASHINGTON, *Circuit Judge:* This is a patent case, involving alleged infringement. Mrs. Florence F. Loudon is the holder of U.S. Patent No. 2,672,194, entitled "Supporting Means for Curtains and the Like." The patent covers a tape which is applied to the top edge of a curtain or drape, together with a form of hook which fits into pockets in the tape in such a way as to form the drape into pleats and folds. She caused her attorneys to send letters to numerous department stores, charging that her patent was being infringed by tape and hook combinations

being manufactured by the Consolidated Trimming Corporation, and demanding the discontinuance of the sale of "devices which constitute infringements" of her patent. Consolidated thereupon filed suit in the District Court seeking a declaratory judgment that Mrs. Loudon's patent is invalid and is not infringed by Consolidated's product. Mrs. Loudon filed an answer but no counterclaim. After a trial the court concluded that plaintiff: (Consolidated) had the burden of proving—but had not proved—its allegations that the patent in suit is invalid, that the patent is unenforceable, and that it is not infringed by plaintiff's products. The court further concluded that defendant's patent is presumed to be valid and enforceable unless the contrary is proved, that plaintiff is not entitled to any of the relief which it seeks, and that the complaint should be dismissed. Judgment was thereupon entered dismissing the complaint. On this appeal Consolidated argues that the burden of proof on the issue of infringement was on defendant Loudon, who had theretofore charged infringement, that the plaintiff's accused devices do not infringe the defendant's patent, and that in any event the patent is invalid, chiefly by reason of lack of invention in view of the prior art.

Under the better practice, a court's first concern in cases of this sort should be with the question of the validity of the patent allegedly infringed. *Sinclair Co. v. Interchemical Corp.*, 325 U. S. 327, 330 (1945). In Mrs. Loudon's patent, Claims 1, 2, 3 and 4 describe the pleater hook; Claim 1, which is representative, reads as follows:

> "For use with a drape having at its upper end a plurality of vertically extending horizontally spaced parallel tunnels or loops closed at their upper ends and open at their lower ends, a pleater and supporting means having four inverted U-shaped pocket engaging fingers of narrow width and having rounded upper ends and disposed in a single plane and a hook located between the two center fingers and directed substantially at right angles to the plane of the fin-

gers, said hook having the supporting portion thereof below the rounded upper ends of the fingers."

Claim 5, which describes the combination of the hook with the pleater tape, provides:

> "The combination of a drapery curtain having a pleater pocket strip applied transversely at the upper hanging edge of the curtain and said pleater strip being provided with a plurality of spaced apart vertically extending parallel pockets open at their lower ends and closed at their upper ends, said pleater strip being secured to the curtain at its upper and lower edges to leave the lower ends of the pockets open and unobstructed, a supporting hanging and pleating hook member having four elongated upright non-penetrating pocket entering fingers of substantially the same length extending upwardly in closely disposed horizontally spaced relation, said fingers having blunt upper ends and being disposed in a single plane for insertion upwardly into the open ends of a plurality of said pockets, and a supporting hook portion located between the two middle fingers with the hook portion thereof disposed rearwardly and substantially midway of the length of said fingers, said fingers being more closely spaced and brought together than the spacing of the pockets whereby the fingers when fitted endwise upwardly into said pockets cooperate to draw the upper edge of the curtain together in a pinch-pleat arrangement with the several fingers each supporting a pleat through substantially the entire vertical extent of the pinch-pleat and supporting each pleat laterally and forwardly and rearwardly with the upper ends of the fingers in the pockets having closed upper ends supporting the curtain against sagging upon the fingers of the supporting member."

The essential principle of appellee's device is this: When prongs with little space between are inserted into pockets of a tape spaced at greater intervals, the prongs

will cause the tape to bunch or pleat. And of course if the tape is sewn to a curtain and the prongs are equipped with a hook, proper insertion will cause the curtain to have pleats, and it may be hung. This idea was shown in 1904 by Knight's British Patent No. 24,522 and in 1906 by Carr's U. S. Patent No. 834,188. The specification for Knight discloses: "A tape or webbing for heading of curtains and hangings having loops attached or interwoven at intervals of its length. A hook or suspender carring three claws arranged in triangular form. By means of the hooks and tape or webbing aforementioned, the curtain or hanging to which they are attached is gathered into folds, or box pleats, by inserting one or more of the claws of said hook, into whichever, or as many of the loops in or on the tape as may be necessary to produce the desired result." Both Knight's and Carr's hooks create pleats or folds because the distance between the pockets in the tape is greater than the distance between the hooks.

The question is, then, whether Mrs. Loudon's patent shows invention over the prior art.[1] She says that it does: that she has produced a "novel combination." Her device differs from both Knight and Carr in that the back or shank of the hook is lower than the top of the prong. But this development is shown as early as Nachmann (No. 763,780), who specifically notes its utility in causing the curtain to conceal the hanging device behind it. Appellee's prongs are all in a single plane, an arrangement which is found in Carr and Steiner (No. 2,012,734). Appellee's prong supports the top of a closed pocket, which Carr clearly does not teach and Knight apparently does not. However, Charlton (British Patent No. 151,108) has a single prong, to be inserted in a tape, supporting the closed top of the tube in the tape. And French (No. 2,183,188) specifically states that some of his hooks for use with heading tape are "adapted to engage the furthest parts of the hook tubes."

[1] On this point, Consolidated in effect concedes that it has the burden of proof.

Appellee describes the prongs of her device as being "inverted U-shaped." While we doubt that invention could reside in this modification of styling, it is enough to point out that this same design was employed by Charlton (British Patent No. 151,108).

"The mere aggregation of a number of old parts of elements which, in the aggregation, perform or produce no new or different function or operation than that theretofore performed or produced by them, is not patentable invention." *Lincoln Engineering Co. v. Stewart-Warner Corp.*, 303 U. S. 545, 549 (1938). And in *A. & P. Tea Co. v. Supermarket Corp.*, 340 U. S. 147, 152 (1950), the Court said: "The conjunction or concert of known elements must contribute something; only when the whole in some way exceeds the sum of its parts is the accumlation of old devices patentable." Like the *A. & P.* case, the case now at bar "is wanting in any unusual or surprising consequences from the unification of the elements here concerned," and there is nothing to indicate that the District Court "scrutinized the claims in the light of this rather severe test." *Ibid.* Again, to paraphrase *A. & P.*, we note that neither the Board of Patent Appeals nor the District Court has made "any finding that old elements which made up this device perform any additional or different function in the combination than they perform out of it." *Ibid.*[2]

The District Court's finding as to validity states only that "Plaintiff has failed to carry its burden of proving that the patent in suit is invalid." Nor does the decision of the Board of Patent Appeals offer anything to indicate wherein the aggregation there approved rises to the level of patentable invention. Indeed the Board appears to have

[2] Neither party urges that the new patent act, 35 U. S. C. §§101, *et seq.* (1952), alters the rules announced in A. & P. Tea Co. v. Supermarket Corp., *supra;* furthermore, several courts have held that it does not. *E.g.*, Interstate Rubber Products Corp. v. Radiator Specialty Co., 214 F. 2d 546, 548 (4th Cir. 1954); General Motors Corp. v. Estate Stove Co., 203 F. 2d 912, 918 (6th Cir. 1953).

applied standards contrary to those laid down by the courts. The conclusion of the Board's opinion notes that Mrs. Loudon's device "facilitates the curtain hanging operation and while, in our opinion, . . . [her] contribution is not great, we think that in view of the fact that the art here involved is highly developed, patentiability of the claim is not negatived by the cited patents." In the first place, "A mere advance in efficiency and utility is not enough to convert a non-inventive aggregation into a patentable combination." *Kwikset Locks, Inc. v. Hillgren*, 210 F. 2d 483, 486 (9th Cir. 1954). Secondly, the Board has misconstrued the significance of the crowded state of the art. On the contrary, "to make sure that a monopoly is not granted for mere perfection of workmanship, the courts closely scrutinize claims to combinations for improvements in a crowded art." *Shaffer v. Armer*, 184 F. 2d 303, 307 (10th Cir. 1950).

We think it is clear that Mrs. Loudon's patent is invalid.[3] The *A. & P.* decision seems to us to be controlling. As was there said: "We set aside no finding of fact as to invention, for none has been made. . . . The defect that we find in this judgment is that a standard of invention appears to have been used that is less exacting than that required where a combination is made up entirely of old components. It is on this ground that the judgment below is reversed." 340 U. S. at 153-54.

For these reasons, the judgment of the District Court will be

Reversed, and the cause remanded with directions to enter a judgment declaring that defendant-appellee's patent is invalid, and granting such further relief to plaintiff-appellant as may appear to the court to be just and proper.

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[3] We do not reach the issue of infringement *vel non*, and express no opinion on whether Consolidated had the burden of proof in that regard.

JUDGMENT

(of the U. S. Court of Appeals, dated and entered on November 8, 1956)

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, it is ordered and adjusted by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby reversed, and that this cause be, and the same is hereby, remanded to the said District Court with directions to enter a judgment declaring that defendant-appellee's patent is invalid, and granting such further relief to plaintiff-appellant as may appear to the court to be just and proper.

It is further ORDERED by the Court that appellant herein recover from appellee its taxable costs on this appeal and have execution therefor.

Bill of Costs

As Taxed by Clerk of Court of Appeals

(filed on January 5, 1957)

Costs of Appellant, Consolidated Trimming Corporation in No. 12853, Consolidated Trimming Corp. vs. Florence F. Loudon, C. A. 5421-54

Docket fee	$ 25.00
Brief	206.50
Reply Brief	162.40
Joint Appendix (Volume I & II)	1039.40
	$1433.30

Test: /s/ JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

(Respondent's)

Motion for Reformation of Judgment and Argument in Support Thereof

(served & filed August 15, 1957)
(with some of the argument omitted)

Now comes defendant-appellee and moves for reformation of the judgment entered by this Court on November 8, 1956 by striking therefrom the following:

> "It is further ordered by the Court that appellant herein recover from appellee its taxable costs on this appeal and for execution therefor."

on the grounds that this Court does not have jurisdiction *in personan* over the defendant-appellee.

* * * * * *

This was an action for declaratory judgment as to the validity and infringement of defendant-appellee's United States patent. Defendant-appellee, who is a citizen and resident of Canada, was served only by registered mail under a court order pursuant to 35 U.S.C. §293. The complaint originally also sought an injunction and damages. Defendant-appellee moved to strike the portion of the complaint and prayer relating to the injunction and damages on the gorund that the Court did not have personal jurisdiction over defendant-appellee and could not grant the *in personam* relief of an injunction and damages against her.

The defendant-appellee's motion was sustained by the lower Court (Holtzoff, J.) on March 15, 1955, the Order stating as follows:

> ". . . it is hereby Ordered, Adjudged and Decreed that the cause of action for injunction and for damages stated in the Amended Complaint be and the same hereby are dismissed on the ground that this Court does not have personal jurisdiction over the defendant."

The lower Court, after a trial limited to the cause of action for a Declaratory Judgment, dismissed the complaint and held the patent in suit to be valid. On appeal, this Court reversed the decision of the lower Court on the issue of patent validity.

No appeal was filed by plaintiff-appellant from the lower Court's dismissal of the cause of action for injunction and for damages.

* * * * * *

Since this Court has no jurisdiction over the person of the defendant-appellee but only over the patent *res*, it cannot impose any personal judgment against the defendant-appellee. This principle was established in the famous case of *Pennoyer v. Neff*, 95 U. S. 174 (1877). . . .

* * * * * *

It is urged, therefore, that the jurisdiction of this Court is limited to the patent *res* and that it has no jurisdiction over the person of the defendant-appellee, for which reason *in personam* relief of costs and attorneys' fees cannot be awarded against the defendant-appellee. Accordingly, the Court is requested to strike from its Judgment of November 8, 1956 the reference to recovery of taxable costs by plaintiff-appellant from defendant-appellee.

Attorney for Defendant-Appellee

ORDER

(of the U. S. Court of Appeals, dated and entered on December 12, 1957)

Upon consideration of appellee's motion for reformation of the judgment of this Court in the above case and of the argument of counsel thereon, it is

ORDERED by the Court that the last paragraph of the judgment of this Court be stricken and that in lieu thereof the following paragraph be added:

"It is FURTHER ORDERED by the Court that each party to this appeal shall bear such costs as it has expended in connection with the litigation."

It is FURTHER ORDERED by the Court that the certified copy of the judgment previously issued to the District Court be recalled and that a certified copy of the judgment as now amended be issued to the District Court without delay.

Dated: December 12, 1957 PER CURIAM.

(amended) JUDGMENT

(of the U. S. Court of Appeals, dated and entered on December 12, 1957)

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause, be, and the same is hereby, remanded to the said District Court with directions to enter a judgment declaring that defendant-appellee's patent is invalid, and granting such further relief to plaintiff-appellant as may appear to the court to be just and proper.

It is FURTHER ORDERED by the Court that each party to this appeal shall bear such costs as it has expended in connection with the litigation.

Dated: November 8, 1956, as amended December 12, 1957.